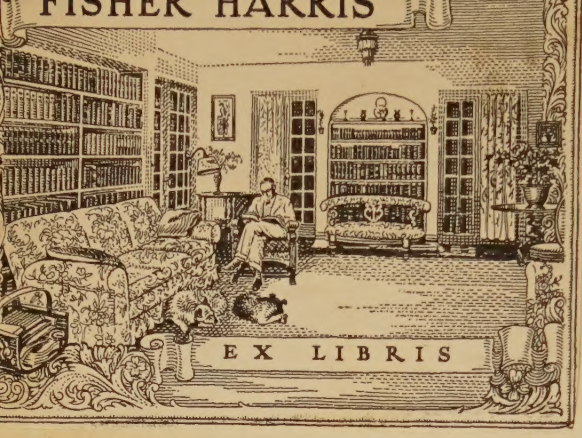
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EVOLUTION OF LAW

VOLUME I

SOURCES OF ANCIENT AND PRIMITIVE LAW

Evolution of Law

Select Readings on the Origin and Development of Legal Institutions

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I. SOURCES OF ANCIENT AND PRIMITIVE LAW.

II. PRIMITIVE AND ANCIENT LEGAL INSTITUTIONS.

III. FORMATIVE INFLUENCES OF LEGAL DEVELOPMENT.

EVOLUTION OF LAW:

SELECT READINGS ON THE ORIGIN AND DEVELOPMENT OF LEGAL INSTITUTIONS

VOLUME I

SOURCES

OF

ANCIENT AND PRIMITIVE LAW

COMPILED BY

ALBERT KOCOUREK

PROFESSOR OF JURISPRUDENCE IN NORTHWESTERN UNIVERSITY

AND

JOHN H. WIGMORE

PROFESSOR OF LAW IN NORTHWESTERN UNIVERSITY

BOSTON

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1915

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" *Thor*

Es ist vorbei.

" *Mephistopheles.*

Vorbei! ein dummes Wort.
Warum vorbei?
Vorbei und reines Nichts, vollkommnes Einerlei!
Was soll uns denn das ew'ge Schaffen!
Geschaffenes zu nichts hinwegzuraffen!
'Da ist's vorbei!' Was ist daran zu lesen?
Es ist so gut, als wär' es nicht gewesen,
Und treibt sich doch im Kreis, als wenn es wäre."

— GOETHE.

"If by any means we can determine the early forms of jural conceptions, they will be invaluable to us. These rudimentary ideas are to the jurist what the primary crusts of the earth are to the geologist. They contain, potentially, all the forms in which law has subsequently exhibited itself. The haste or the prejudice which has generally refused them all but the most superficial examination, must bear the blame of the unsatisfactory condition in which we find the science of jurisprudence."

— MAINE.

"Nous en conclurons que la science du droit n'est pas une science déductive tirée d'axiomes et de principes necéssaires, que c'est une science inductive dont les principes sont des généralisations de l'expérience antérieure; que, par conséquent, ce n'est pas seulement du raisonnement pur, mais du développement historique des législations passées, en même temps que de la comparaison entre elles des législations actuelles, que doit s'inspirer le juriste pour expliquer, pour systématiser, et pour réformer au besoin le droit existant."

— BRISSAUD.

"Sodann ist schon die Verknüpfung mit dem Vergangenen darum wichtig, damit die ganze Kulturbildung nicht verseichtet und versandet; denn nur auf dem Boden der Geschichte kann sich eine Kultur gestalten."

— JOSEF KOHLER.

PREFACE

THE department of legal history deals with particulars, with the special and concrete details of a legal system; while the field of historical jurisprudence is universals, the general and abstract phases of legal evolution. This collection of readings does not aim to present the sequences of facts attached to the names of men, places, and things, necessary (as is now, perhaps, almost universally admitted) to an understanding of legal rules as they obtain here or there; but is intended as an exposition of the law (to use the language of Mr. Justice Holmes) "as a great anthropological document." Therefore these volumes properly will be classified on the side of what is thus, somewhat vaguely, called historical jurisprudence or legal ethnology.

We need not insist too much upon the claim that an acquaintance with the anthropology of the law has a direct, tangible, and quantitative bearing on the isolated manifestations of the law as expressed in the daily conflicts of practical life. Nor yet would we disparage the thought that a general survey of the course of legal evolution has a measurable qualitative relation to the complex, and, at times, discordant play of modern legal phenomena, — at least for those who looking into the vessel of life reflect that "the Eternal Sáki from that bowl has poured millions of bubbles like us, and will pour." Moreover, to advocate such study on the ground of the creation or discovery of a new discipline will fail to persuade; there are already disciplines enough. And, again, an appeal to the informative value of this learning, while the easiest method of justification for a prevailing curiosity into what is strange and bizarre, is not the claim which this undertaking prefers to support.

Not, therefore, as a positive instrument concretely applicable to the details of an existing legal technic, — not as a mental gymnastic, — not to satisfy a natural interest, — but rather as tending to chart in broad outline the march of humanity in its effort to govern itself and work out its destiny, is the conscious

purpose of these readings. They are offered in the belief that the day is not far distant when the students of the law, the teachers of the law, and the examiners in the law will be dissatisfied with an equipment of knowledge which attempts only the dogmatic side, and neglects the universal, and even the specific historical background of legal institutions.

It need hardly be said to any one whose vision has extended to genetic and comparative knowledge of the institutions of society, that the present is not understood without information concerning the past, and that the future must remain a greater enigma than it is, without an attempt to penetrate the course of evolution. Historical knowledge must, and will, always remain the one certain test of present expediency, and the scientific tool for measuring the paths of the ages to come. It is unmistakable that the law of all progressive countries is undergoing rapid changes, easily observable even within the span of the last generation. Only the intolerant reactionary, or the technical stickler whose sense of perspective is destroyed by the details of his craft, can fail to observe the motion of the stream. The revolutionary also may find much in the stolid processes of history which defies the human will and carries out purposes of its own. Every reader will interpret his own philosophy of history, and construct his own generalizations. But certain it is, that from the evidence of man's struggle in countless ages to achieve human society, there may be constructed philosophies and generalizations important enough in a large sense, if not also in terms of immediate use, as instruments of knowledge to be worthy of serious attention.

The philosophies will oscillate between the mechanical pantheism, on one side, of Post, and the view of Hegel, on the other, that history is the "actualization of the universal spirit." The compilers have not sought here to solve any problems of their own, or to ventilate any theories; and naturally they do not offer in these volumes anything as a final solution of the problems involved. When a solution is presented, it is tendered only as a basis of discussion, and a motive for further inquiry. Especially it is sought to avoid any suggestion of espousal of an ultimate metaphysical position as to the meaning and value of history. Nevertheless an intermediate working thesis is necessary to vindicate the very existence of this compilation. It is found in the essential unity of human nature. This is explanatory of the existence of a similarity of institutions among a diversity of peoples where the principle of imitation is inadmissible. It furnishes the distinguishing marks of the

phases and stages of legal evolution, and provides at least one of the important tests of legislative policy. To go farther would trespass on a privilege reserved for the reader.

The field of historical knowledge is to-day so extensive that a great variety of rendering was possible in execution of the purposes of this compilation. A collection of this nature, although governed by a principle of unity, is still liable to be charged with various sins of omission and commission. In this respect, it is much like an anthology, where the personal choice of the compiler as to the flowers of the garden to be plucked will differ in one way and another from the judgment of every other person in the world. The risk of displeasing every one at some point is therefore inevitable.

Primarily these readings have been projected, as an introduction to the study of specific legal systems, for use in law schools which are now limited to the classic text of Maine's "Ancient Law." Secondarily (only in intention, but equally and perhaps greater in advantage) these readings may be employed by the lawyer who has completed the conventional course of legal studies, and by the cultured general reader who seeks to find in the history of legal institutions man's most important effort to emerge from the night of savagery to the light of civilization.

The plan of the present work dealing with Ancient and Primitive Law involves three volumes. The first is a compilation of sources selected from (i) ancient literatures, (ii) modern observations of retarded peoples, (iii) ancient laws, and (iv) legal transactions, including trials and documents. The second selects chapters from modern scholars expounding the relation of law to general social institutions, and such specific legal institutions as Family, Property, Contract, etc. The third volume will select similar chapters interpreting the formative influences which have governed the development of the law. The present undertaking, therefore, aims to present an outline, chiefly of the rudimentary and basic part of legal evolution, and incidentally, for purposes of comparison, ancient law. Similar treatment of developed and modern institutions is another distinct program.

The course of the work proceeds from the purely concrete as shown in the first volume to the abstract as represented in the third volume. As legal history has hitherto been taught, the student has been learnedly instructed in the meaning and influence (let us say) of such laws as the Twelve Tables or the Lex Salica without having read these laws themselves. This

we believe is a fundamental error. With the successful issue of the case method before our eyes, which is spreading to other fields from the law, we begin by placing in the hands of the reader the best evidence of ancient law, either the law itself, when there is written law, or an ancient record from general literature of customary law, when there is no written law. Primitive peoples are, in a similar way, made known by the record of trained observers. This method of presentation was regarded as indispensable.

With the exception of Mr. Henderson's compilation of the "Historical Documents of the Middle Ages" (which is comparable to the first volume) we believe that no similar undertaking has been attempted in English, and the indulgence of the learned critic will be presumed in this attempt to treat in a pioneer way the large field entered. Some harmless inconsistency of arrangement will be evident to the expert, but absolute logical symmetry was unattainable without necessary disadvantages. The combination of ancient and primitive law itself results, in fact, in inconsistency. Barring the controversy provoked by the term "primitive" (for what is the test of "primitive"?) there are examples of ancient law as modern in conception as anything seen in the world to-day. A "citizen of a modern city would probably feel more at home in ancient Babylon than in medieval Europe" (Johns, "Babylonian and Assyrian Laws," p. vii). Why, it may be asked, are such things combined with the legal mores of the Kaffirs, the red Indians, and the Eskimos?

The fact of this combination of conflicting elements within the same volume has developed the problem of space limitations, and for this reason original notes and bibliographies are omitted. Such notes of our own as were not to be avoided are put in square brackets.

Further explanation might appear to attach more importance to our part in assembling the writings of others, than we desire to assert. But it needs to be said that the present selections are substantially only an outline, and represent the irreducible minimum of what is to be compassed by the student who approaches this subject. In particular, it may be suggested, also, that what is here presented is only the external shell of legal evolution. The internal life of this development must be constructed by other agencies than history, — which is after all only the more or less satisfactory appearance of the reality within.

The compilers desire to make grateful acknowledgment to the various authors and publishers represented in this Series

for their generous coöperation in our plans, and it should be urged that the selections which appear in this Series, while adequate to the object sought, do not fairly represent the value of the works from which they are taken.

The compilers also express their indebtedness to Elbert H. Gary, Esq., of New York City, for his ample provision of materials consulted in the Gary Library of Ancient and Primitive Law (in Northwestern University).

A. K.,
J. H. W.

ADDENDUM TO PREFACE

TWENTY-FIVE years ago, while living in Japan, I became interested in the sources of old Japanese law. On turning over its then unpublished materials, I discovered that its institutions, point for point, showed parallel legal ideas, and sometimes (amidst influences totally independent) a striking similarity of development with the Occident. I was led to study these ideas from the comparative point of view. As yet a novice in the world of legal thought, I came under the fascination of what is called comparative law (or, as it may preferably be named, universal legal ideas). And I felt a wish and hope to cultivate that field especially.

The world-wide spell of Maine's "Ancient Law" (published nearly a generation before) was still unique. Fustel's "Ancient City," its contemporary in France, had established a new point of view. Little or nothing more had been done by Anglo-American scholars; Tylor, Lubbock, Morgan, MacLennan, had not emphasized the legal element in evolution, nor its continuity and universality. Even on the Continent the science of comparative law was but summoning its adherents and marshalling its materials. Dareste was just publishing (1889) his first series of "Etudes." Post's "Ursprung des Rechts" (1876), "Bausteine" (1880), and "Grundlagen" (1884), were beginning to receive a hearing. Kohler's "Zeitschrift" had been started a decade before (1878). Tarde's "Transformations du droit" (1893), Letourneau's "Evolution juridique" (1891), and Leist's "Alt-arisches jus" (1889, 1892), were yet in manuscript.

In a published study (now forgotten by the learned world) on "The Pledge-Idea," I satisfied myself there were great possibilities in the tracing of the evolution of universal legal ideas. I can see now, in the light of what others have since

done, how much more there is in the philosophy of the subject than I then imagined. But that early experience convinced me in a personal way that the subject had a real claim upon us and a great future, — immensely greater than the then state of the literature might indicate.

Circumstances obstructed my wish to pursue the task, and it was laid aside as a dream. But, through the kindness of my colleague, the opportunity has now after all been afforded to me to take a share in the work awaiting to be done in this fascinating field.

I obtrude here this personal statement because I have a sentimental interest in thus returning to the science of my early hopes. And it will perhaps be interesting to some to be reminded how long we have been waiting in Anglo-America to take up into our scientific legal thought the study of this culminating and comprehensive subject. Maine's inspiring call has echoed all through these fifty years. For part of that time, the materials for general study were perhaps hardly worth while. But now they are plentiful. The hope of the editors of this work is that it will provide at once a stimulus and an opportunity for a general interest in the subject, and will help it to take its rightful place in legal studies.

J. H. W.

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EVOLUTION OF LAW

Volume I

SOURCES OF ANCIENT AND PRIMITIVE LAW

PART ONE

GENERAL LITERATURE

Chapter I

THE ILIAD OF HOMER[1]

BOOK I

How Agamemnon and Achilles fell out at the siege of Troy; and Achilles withdrew himself from battle, and won from Zeus a pledge that his wrong should be avenged on Agamemnon and the Achaians.

* * * * * * *

But he sat by his swift-faring ships, still wroth, even the heaven-sprung son of Peleus, Achilles, fleet of foot; he betook him neither to the assembly that is the hero's glory, neither to war, but consumed his heart in tarrying in his place, and yearned for the war-cry and for battle. . . .

BOOK II

How Zeus beguiled Agamemnon by a dream; and of the assembly of the Achaians and their marching forth to battle. And of the names and numbers of the hosts of the Achaians and the Trojans.

* * * * * * *

[1] [From the (revised) prose translation of Andrew Lang, Walter Leaf, and Ernest Myers (London, 1911), with the consent of Macmillan and Co., Limited, publisher. Books I–IX are the translation of Mr. Leaf; Books X–XVI, of Mr. Lang; and Books XVII–XXIV, of Mr. Myers.
Herodotus fixes the time of Homer at a period not more than 400 years before his own, or about 850 B.C. Modern authorities carry Homer back to a period from 900 to 1100 B.C.]

Now went the goddess Dawn to high Olympus, foretelling daylight to Zeus and all the immortals; and the king bade the clear-voiced heralds summon to the assembly the flowing-haired Achaians. So did those summon, and these gathered with speed. But first the council of the great-hearted elders met beside the ship of king Nestor the Pylos-born. . . .

* * * * * * *

And then spake among them knightly Nestor of Gerenia: "Out on it; in very truth ye hold assembly like silly boys that have no care for deeds of war. What shall come of our covenants and our oaths? . . . But do thou, my king, take good counsel thyself, and hearken to another that shall give it; the word that I speak, whate'er it be, shall not be cast away. Separate thy warriors by tribes and by clans, Agamemnon, that clan may give aid to clan and tribe to tribe. If thou do thus and the Achaians hearken to thee, then wilt thou know who among thy captains and who of the common sort is a coward, and who too is brave; for they will fight each after their sort. . . ."

And lord Agamemnon answered and said to him: "Verily hast thou again outdone the sons of the Achaians in speech, old man. Ah, father Zeus and Athene and Apollo, would that among the Achaians I had ten such councillors; then would the city of king Priam soon bow beneath our hands, captive and wasted. But ægis-bearing Zeus, the son of Kronos, hath brought sorrows upon me, in that he casteth my lot amid fruitless wranglings and strifes. For in truth I and Achilles fought about a damsel with violent words, and I was first to be angry; but if we can only be at one in council, then will there no more be any putting off the day of evil for the Trojans, no not for an instant. But now go ye to your meal that we may join battle. Let each man sharpen well his spear and bestow well his shield, and let him well give his fleet-footed steeds their meal, and look well to his chariot on every side and take thought for battle, that all day long we may contend in hateful war. For of respite shall there intervene no, not a whit, only that the coming of night shall part the fury of warriors. On each man's breast shall the baldrick of his covering shield be wet with sweat, and his hand shall grow faint about the spear, and each man's horse shall sweat as he draweth the polished chariot. And whomsoever I perceive minded to tarry far from the fight beside the beaked ships, for him shall there be no hope hereafter to escape the dogs and birds of prey." . . .

And they stood up and scattered in haste throughout the ships, and made fires in the huts and took their meal. And they did sacrifice each man to one of the everlasting gods, praying for escape from death and the tumult of battle. And Agamemnon king of men slew a fat bull of five years to most mighty Kronion, and called the elders, the princes of the Achaian host, Nestor first and king Idomeneus, and then the two Aiantes and Tydeus' son, and sixthly Odysseus peer of Zeus in counsel. And Menelaos of the loud war-cry came to him unbidden, for he knew in his heart how his brother toiled. Then stood they around the bull and took the barley-meal. And Agamemnon made his prayer in their midst and said: "Zeus, most glorious, most great, god of the storm-cloud, that dwellest in the heaven, vouchsafe that the sun set not upon us nor the darkness come near, till I have laid low upon the earth Priam's palace smirched with smoke, and burnt the door-ways thereof with consuming fire, and rent on Hector's breast his doublet cleft with the blade; and about him may full many of his comrades prone in the dust bite the earth."

So spake he, but not as yet would Kronion grant him fulfilment; he accepted the sacrifice, but made toil to wax unceasingly.

Now when they had prayed and sprinkled the barley-meal they first drew back the bull's head and cut his throat and flayed him, and cut slices from the thighs and wrapped them in fat, making a double fold, and laid raw collops thereon. And these they burnt on cleft wood stript of leaves, and spitted the vitals and held them over Hephaistos' flame. Now when the thighs were burnt and they had tasted the vitals, then sliced they all the rest and pierced it through with spits, and roasted it carefully and drew all off again. So when they had rest from the task and had made ready the banquet, they feasted, nor was their heart aught stinted of the fair banquet. But when they had put away from them the desire of meat and drink, then did knightly Nestor of Gerenia open his saying to them: "Most noble son of Atreus, Agamemnon king of men, let us not any more hold long converse here, nor for long delay the work that god putteth in our hands; but come, let the heralds of the mail-clad Achaians make proclamation to the folk and gather them throughout the ships; and let us go thus in concert through the wide host of the Achaians, that the speedier we may arouse keen war."

So spake he and Agamemnon king of men disregarded not. Straightway he bade the clear-voiced heralds summon to battle the flowing-haired Achaians. So those summoned and these

gathered with all speed. And the kings, the fosterlings of Zeus that were about Atreus' son, eagerly marshalled them, and bright-eyed Athene in the midst, bearing the holy ægis that knoweth neither age nor death, whereon wave an hundred tassels of pure gold, all deftly woven and each one an hundred oxen worth. Therewith she passed dazzling through the Achaian folk, urging them forth; and in every man's heart she roused strength to battle without ceasing and to fight. So was war made sweeter to them than to depart in their hollow ships to their dear native land. Even as ravaging fire kindleth a boundless forest on a mountain's peaks, and the blaze is seen from afar, even so as they marched went the dazzling gleam from the innumerable bronze through the sky even unto the heavens.

And as the many tribes of feathered birds, wild geese, or cranes or long-necked swans, on the Asian mead by Kaystrios' stream, fly hither and thither joying in their plumage, and with loud cries settle ever onwards, and the mead resounds; even so poured forth the many tribes of warriors from ships and huts into the Skamandrian plain. And the earth echoed terribly beneath the tread of men and horses. So stood they in the flowery Skamandrian plain, unnumbered as are leaves and flowers in their season. Even as the many tribes of thick flies that hover about a herdsman's steading in the spring season, when milk drencheth the pails, even in like number stood the flowing-haired Achaians upon the plain in face of the Trojans, eager to rend them asunder. And even as the goatherds easily divide the ranging flocks of goats when they mingle in the pasture, so did their captains marshal them on this side and on that, to enter into the fray, and in their midst lord Agamemnon, his head and eyes like unto Zeus whose joy is in the thunder, and his waist like unto Ares and his breast unto Poseidon. Even as a bull standeth out far foremost amid the herd, for he is pre-eminent amid the pasturing kine, even such did Zeus make Atreides on that day, pre-eminent among many and chief amid heroes.

* * * * * * *

BOOK III

How Menelaos and Paris fought in single combat; and Aphrodite rescued Paris. And how Helen and Priam beheld the Achaian host from the walls of Troy.

* * * * * * *

BOOK IV

How Pandaros wounded Menelaos by treachery; and Agamemnon exhorted his chief captains to battle.

* * * * * * *

BOOK V

How Diomedes by his great valor made havoc of the Trojans, and wounded even Aphrodite and Ares by the help of Athene.

* * * * * * *

BOOK VI

How Diomedes and Glaukos being about to fight, were known to each other, and parted in friendliness. And how Hector returning to the city bade farewell to Andromache his wife.

* * * * * * *

So said he [Glaukos], and Diomedes of the loud war-cry was glad. He planted his spear in the bounteous earth and with soft words spake to the shepherd of the host: "Surely then thou art to me a guest-friend of old times through my father: for goodly Oineus of yore entertained noble Bellerophon in his halls and kept him twenty days. Moreover they gave each the other goodly gifts of friendship; Oineus gave a belt bright with purple, and Bellerophon a gold twy-handled cup, the which when I came I left in my palace. But of Tydeus I remember naught, seeing I was yet little when he left me, what time the Achaian host perished at Thebes. Therefore now am I to thee a dear guest-friend in midmost Argos, and thou in Lykia, whene'er I fare to your land. So let us shun each other's spears, even amid the throng; Trojans are there in multitudes and famous allies for me to slay, whoe'er it be that God vouchsafeth me and my feet overtake; and for thee are there Achaians in multitude, to slay whome'er thou canst. But let us make exchange of arms between us, that these also may know how we avow ourselves to be guest-friends by lineage."

So spake the twain, and leaping from their cars clasped each the other by his hand, and pledged their faith. But now Zeus son of Kronos took from Glaukos his wits, in that he made exchange with Diomedes Tydeús' son of golden armour for bronze, the price of five score oxen for the price of nine.

Now when Hector came to the Skaian gates and to the oak-tree, there came running round about him the Trojans' wives and daughters, enquiring of sons and brethren and friends and husbands. But he bade them thereat all in turn pray to the gods; but sorrow hung over many.

But when he came to Priam's beautiful palace, adorned with polished colonnades — and in it were fifty chambers of polished stone, builded hard by one another, wherein Priam's sons slept beside their wedded wives; and for his daughters over against them on the other side within the courtyard were twelve roofed chambers of polished stone builded hard by one another, wherein slept Priam's sons-in-law beside their chaste wives — then came there to meet him his bountiful mother, leading with her Laodike, fairest of her daughters to look on; and she clasped her hand in his, and spake, and called upon his name: "My son, why hast thou left violent battle to come hither? Surely the sons of the Achaians — name of evil! — press thee hard in fight about thy city, and so thy spirit hath brought thee hither, to come and stretch forth thy hands to Zeus from the citadel. But tarry till I bring thee honey-sweet wine, that thou mayest pour libation to Zeus and all the immortals first, and then shalt thou thyself also be refreshed if thou wilt drink. . . ."

BOOK VII

Of the single combat between Aias and Hector, and of the burying of the dead, and the building of a wall about the Achaian ships.

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Such converse held these one with the other, and the sun went down, and the work of the Achaians was accomplished; and they slaughtered oxen amid the huts, and took supper. And many ships from Lemnos, bearing wine, were at hand, sent of Jason's son Euneos, whom Hypsipyle bare to Jason shepherd of the host. And specially for Atreus' sons, Agamemnon and Menelaos, Jason's son gave a freight of wine, even a thousand measures. So the flowing-haired Achaians bought them wine thence, some for bronze and some for gleaming iron, and some with hides and some with whole kine, and some with captives;[1] and they set a rich feast before them. Then all night long feasted the flowing-haired Achaians, and in the city the Trojans and allies; and all night long Zeus the lord of counsel devised them ill with terrible thunderings. Then pale fear gat hold upon them, and they spilt wine from their cups upon the earth, neither durst any drink till he had made libation to most mighty Kronion. Then laid they them to rest and took the boon of sleep.

[1] [According to Theophilus, the earliest literary monument of barter. — EDS.]

BOOK VIII

How Zeus bethought him of his promise to avenge Achilles' wrong on Agamemnon; and therefore bade the gods refrain from war, and gave victory to the Trojans.

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BOOK IX

How Agamemnon sent an embassage to Achilles, beseeching him to be appeased; and how Achilles denied him.

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But Atreides was stricken to the heart with sore grief, and went about bidding the clear-voiced heralds summon every man by name to the assembly, but not to shout aloud; and himself he toiled amid the foremost. So they sat sorrowful in assembly, and Agamemnon stood up weeping like unto a fountain of dark water that from a beetling cliff poureth down its black stream; even so with deep groaning he spake amid the Argives and said: "My friends, leaders and captains of the Argives, Zeus son of Kronos hath bound me with might in grievous blindness of soul; hard of heart is he, for that erewhile he promised and gave his pledge that not till I had laid waste well-walled Ilios should I depart, but now hath planned a cruel wile, and biddeth me return in dishonour to Argos with the loss of many of my folk. Such meseemeth is the good pleasure of most mighty Zeus, that hath laid low the heads of many cities, yea and shall lay low; for his is highest power. So come, even as I shall bid, let us all obey; let us flee with our ships to our dear native land, for now shall we never take wide-wayed Troy."

So said he, and they all held their peace and kept silence. Long time were the sons of the Achaians voiceless for grief, but at the last Diomedes of the loud war-cry spake amid them and said: "Atreides, with thee first in thy folly will I contend, where it is just, O king, even in the assembly; be not thou wroth therefore. My valour didst thou blame in chief amid the Danaans, and saidst that I was no man of war but a coward; and all this know the Argives both young and old. But the son of crooked-counselling Kronos hath endowed thee but by halves; he granted thee to have the honour of the sceptre above all men, but valour he gave thee not, wherein is highest power. Sir, deemest thou that the sons of the Achaians are thus indeed cowards and weaklings as thou sayest? But and if thine own heart be set on departing, go thy way; the way is before

thee, and thy ships stand beside the sea, even the great multitude that followed thee from Mykene. But all the other flowing-haired Achaians will tarry here until we lay waste Troy. Nay, let them too flee on their ships to their dear native land; yet will we twain, even I and Sthenelos, fight till we attain the goal of Ilios; for in God's name are we come."

So said he, and all the sons of the Achaians shouted aloud, applauding the saying of horse-taming Diomedes. Then knightly Nestor arose and said amid them: "Tydeides, in battle art thou passing mighty, and in council art thou best among thine equals in years; none of all the Achaians will make light of thy word nor gainsay it; but thou hast not made a full end of thy words. Moreover thou art a young man indeed, and mightest even be my son, my youngest-born; yet thou counsellest prudently the princes of the Achaians, because thou speakest according unto right. But lo, I that avow me to be older than thou will speak forth and expound everything; neither shall any man despise my saying, not even the lord Agamemnon. A tribeless, lawless, homeless man is he that loveth bitter civil strife. Howbeit now let us yield to black night and make ready our meal; and let the sentinels bestow them severally along the deep-delved foss without the wall. This charge give I to the young men; and thou, Atreides, lead them the way, for thou art the most royal. Spread thou a feast for the councillors; that is thy place and seemly for thee. Thy huts are full of wine that the ships of the Achaians bring thee by day from Thrace across the wide sea; all entertainment is for thee, being king over many. In the gathering of many shalt thou listen to him that deviseth the most excellent counsel; sore need have all the Achaians of such as is good and prudent, because hard by the ships our foemen are burning their watch-fires in multitude; what man can rejoice thereat? This night shall either destroy or save the host."

So said he, and they gladly hearkened to him and obeyed. Forth sallied the sentinels in their harness, around Thrasymedes Nestor's son, shepherd of the host, and Askalaphos and Ialmenos sons of Ares, and Meriones and Aphareus and Deïpyros and Kreion's son noble Lykomedes. Seven were the captains of the sentinels, and with each went fivescore young men bearing their long spears in their hands; and they took post midway betwixt foss and wall, and kindled a fire and made ready each man his meal.

Then Atreides gathered the councillors of the Achaians, and led them to his hut, and spread before them an abundant feast.

So they put forth their hands to the good cheer that lay before them. And when they had put away from them the desire of meat and drink, then the old man first began to weave his counsel, even Nestor, whose rede of old time was approved the best. He of good intent spake to them and said: "Most noble son of Atreus, Agamemnon king of men, in thy name will I end and with thy name begin, because thou art king over many hosts, and to thy hand Zeus hath entrusted sceptre and law, that thou mayest take counsel for thy folk. Thee therefore more than any it behoveth both to speak and hearken, and to accomplish what another than thou may say, when his heart biddeth him speak for profit: wheresoever thou leadest all shall turn on thee, so I will speak as me-seemeth best. No other man shall have a more excellent thought than this that I bear in mind from old time even until now, since the day when thou, O heaven-sprung king, didst go and take the damsel Briseis from angry Achilles' hut by no consent of ours. Nay, I right heartily dissuaded thee; but thou yieldedst to thy proud spirit, and dishonouredst a man of valour whom even the immortals honoured; for thou didst take and keepest from him his meed of valour. Still let us even now take thought how we may appease him and persuade him with gifts of friendship and kindly words."

And Agamemnon king of men answered and said to him: "Old sir, in no false wise hast thou accused my folly. Fool was I, I myself deny it not. Worth many hosts is he whom Zeus loveth in his heart, even as now he honoureth this man and destroyeth the host of the Achaians. But seeing I was a fool in that I yielded to my sorry passion, I will make amends and give a recompense beyond telling. In the midst of you all I will name the excellent gifts; seven tripods untouched of fire, and ten talents of gold and twenty gleaming caldrons, and twelve stalwart horses, winners in the race, that have taken prizes by their speed. No lackwealth were that man, neither endowered of precious gold, whose substance were as great as the prizes my whole-hooved steeds have borne me off. And seven women will I give, skilled in excellent handiwork, Lesbians whom I chose me from the spoils the day that he himself took stablished Lesbos, surpassing womankind in beauty. These will I give him, and with them shall be she whom erst I took from him, even the daughter of Briseus. . . . All these things shall be set straightway before him; and if hereafter the gods grant us to lay waste the great city of Priam, then let him enter in when we Achaians be dividing the spoil, and lade his ship full of

gold and bronze, and himself choose twenty Trojan women, the fairest that there be after Helen of Argos. And if we win to the richest of lands, even Achaian Argos, he shall be my son and I will hold him in like honour with Orestes, my stripling boy that is nurtured in all abundance. Three daughters are mine in my well-builded hall, Chrysothemis and Laodike and Iphianassa; let him take of them which he will, without gifts of wooing, to Peleus' house; and I will add a great dower such as no man ever yet gave with his daughter. And seven well-peopled cities will I give him, Kardamyle and Enope and grassy Hire and holy Pherai and Antheia deep in meads, and fair Aipeia and Pedasos land of vines. And all are nigh to the salt sea, on the uttermost border of sandy Pylos; therein dwell men abounding in flocks and kine, men that shall worship him like a god with gifts, and beneath his sway fulfil his prosperous ordinances. All this will I accomplish so he but cease from wrath. Let him yield; Hades I ween is not to be softened neither overcome, and therefore is he hatefullest of all gods to mortals. Yea, let him be ruled by me, inasmuch as I am more royal and avow me to be the elder in years."

Then knightly Nestor of Gerenia answered and said: "Most noble son of Atreus, Agamemnon king of men, now are these gifts not lightly to be esteemed that thou offerest king Achilles. Come therefore, let us speed forth picked men to go with all haste to the hut of Peleus' son Achilles. Lo now, whomsoever I appoint let them consent. First let Phoinix dear to Zeus lead the way, and after him great Aias and noble Odysseus; and for heralds let Odios and Eurybates be their companions. And now bring water for our hands, and bid keep holy silence, that we may pray unto Zeus the son of Kronos, if perchance he will have mercy upon us."

So said he, and spake words that were well pleasing unto all. Forthwith the heralds poured water on their hands, and the young men crowned the bowls with drink and gave each man his portion after they had poured the libation in the cups. And when they had made libation and drunk as their heart desired, they issued forth from the hut of Agamemnon son of Atreus. And knightly Nestor of Gerenia gave them full charge, with many a glance to each, and chiefest to Odysseus, how they should essay to prevail on Peleus' noble son.

So the twain went along the shore of the loud-sounding sea, making instant prayer to the earth-embracer, the Shaker of the Earth, that they might with ease prevail on Aiakides' great heart.

So they came to the huts and ships of the Myrmidons, and found their king taking his pleasure of a loud lyre, fair, of curious work, with a silver cross-bar upon it; one that he had taken from the spoils when he laid Eëtion's city waste. Therein he was delighting his soul, and singing the glories of heroes. And over against him sate Patroklos alone in silence, watching till Aiakides should cease from singing. So the twain came forward, and noble Odysseus led the way, and they stood before his face; and Achilles sprang up amazed with the lyre in his hand, and left the seat where he was sitting, and in like manner Patroklos when he beheld the men arose. Then Achilles fleet of foot greeted them and said: "Welcome; verily ye are friends that are come — sore indeed is the need — even ye that are dearest of the Achaians to me even in my wrath."

So spake noble Achilles and led them forward, and made them sit on settles and carpets of purple; and anon he spake to Patroklos being near: "Bring forth a greater bowl, thou son of Menoitios; mingle stronger drink, and prepare each man a cup, for dearest of men are these that are under my roof."

So said he, and Patroklos hearkened to his dear comrade. He cast down a great fleshing-block in the fire-light, and laid thereon a sheep's back and a fat goat's, and a great hog's chine rich with fat. And Automedon held them for him, while Achilles carved. Then he sliced well the meat and pierced it through with spits, and Menoitios' son, that godlike hero, made the fire burn high. Then when the fire was burned down and the flame waned, he scattered the embers and laid the spits thereover, resting them on the spit-racks, when he had sprinkled them with holy salt. Then when he had roasted the meat and apportioned it in the platters, Patroklos took bread and dealt it forth on the table in fair baskets, and Achilles dealt the meat. And he sate him over against godlike Odysseus by the other wall, and bade his comrade Patroklos do sacrifice to the gods; so he cast the first-fruits into the fire. Then put they forth their hands to the good cheer lying before them. And when they had put from them the desire of meat and drink, Aias nodded to Phoinix. But noble Odysseus marked it, and filled a cup with wine and pledged Achilles: "Hail, O Achilles! The fair feast lack we not either in the hut of Agamemnon son of Atreus neither now in thine; for feasting is there abundance to our heart's desire, but our thought is not for matters of the delicious feast; nay, we behold very sore destruction, thou fosterling of Zeus, and are afraid.

Now is it in doubt whether we save the benched ships or behold them perish, if thou put not on thy might. Nigh unto ships and wall have the high-hearted Trojans and famed allies pitched their camp, and kindled many fires throughout their host, and ween that they shall no more be withheld but will fall on our black ships. Agamemnon offereth thee worthy gifts, so thou wilt cease from anger. Lo now, hearken thou to me, and I will tell thee all the gifts that in his hut Agamemnon promised thee. . . ."

And Achilles fleet of foot answered and said unto him: "Heaven-sprung son of Laertes, Odysseus of many wiles, in openness must I now declare unto you my saying, even as I am minded and as the fulfilment thereof shall be, that ye may not sit before me and coax this way and that. . . . Twelve cities of men have I laid waste from ship-board, and from land eleven, I do you to wit, throughout deep-soiled Troy-land; out of all these took I many goodly treasures and would bring and give them all to Agamemnon son of Atreus, and he staying behind amid the fleet ships would take them and portion out some few but keep the most. Now some he gave to be meeds of honour to the princes and the kings, and theirs are left untouched; . . . But now that he hath taken my meed of honour from mine arms and hath deceived me, let him not tempt me that know him full well; he shall not prevail. Nay, Odysseus, let him take counsel with thee and all the princes to ward from the ships the consuming fire. Verily without mine aid he hath wrought many things, and built a wall and dug a foss about it wide and deep and set a palisade therein; yet even so can he not stay murderous Hector's might. I will to-morrow do sacrifice to Zeus and all the gods, and store well my ships when I have launched them on the salt sea — then shalt thou see, if thou wilt and hast any care therefor, my ships sailing at break of day over Hellespont, the fishes' home, and my men right eager at the oar; and if the great Shaker of the Earth grant me good journey, on the third day should I reach deep-soiled Phthia. There are my great possessions that I left when I came hither to my hurt; and yet more gold and ruddy bronze shall I bring from hence, and fair-girdled women and grey iron, all at least that were mine by lot; only my meed of honour hath he that gave it me taken back in his despitefulness, even lord Agamemnon son of Atreus. To him declare ye everything even as I charge you, openly, that all the Achaians likewise many have indignation, if haply he hopeth to beguile yet some other Danaan, for that he is ever clothed in shamelessness. And the daughter

of Agamemnon son of Atreus will I not wed, not were she rival of golden Aphrodite for fairness and for handiwork matched bright-eyed Athene — not even then will I wed her; let him choose him of the Achaians another that is his peer and is more royal than I. For if the gods indeed preserve me and I come unto my home, then will Peleus himself seek me a wife. Many Achaian maidens are there throughout Hellas and Phthia, daughters of princes that ward their cities; whomsoever of these I wish will I make my dear lady. Very often was my high soul moved to take me there a wedded wife, a helpmeet for me, and have joy of the possessions that the old man Peleus possesseth. For not of like worth with life hold I even all the wealth that men say was possessed of the well-peopled city of Ilios in days of peace gone by, before the sons of the Achaians came; neither all the treasure that the stone threshold of the archer Phœbus Apollo encompasseth in rocky Pytho. For kine and goodly flocks are to be had for the harrying, and tripods and chestnut horses for the purchasing; but to bring back man's life neither harrying nor earning availeth when once it hath passed the barrier of his lips. For thus my goddess mother telleth me, Thetis the silver-footed, that twain fates are bearing me to the issue of death. If I abide here and besiege the Trojans' city, then my returning home is taken from me, but my fame shall be imperishable; but if I go home to my dear native land, my high fame is taken from me, but my life shall endure long while, neither shall the issue of death soon reach me. Moreover I would counsel you all to set sail homeward, seeing ye shall never reach your goal of steep Ilios; of a surety far-seeing Zeus holdeth his hand over her and her folk are of good courage. So go your way and tell my answer to the princes of the Achaians, even as is the office of elders, that they may devise in their hearts some other better counsel, such as shall save them their ships and the host of the Achaians amid the hollow ships: since this counsel availeth them naught that they have now devised, by reason of my fierce wrath. But let Phoinix now abide with us and lay him to rest, that he may follow with me on my ships to our dear native land to-morrow, if he will; for I will not take him perforce."

So spake he, and they all held their peace and were still, and marvelled at his saying; for he denied them very vehemently. But at the last spake to them the old knight Phoinix, bursting into tears, because he was sore afraid for the ships of the Achaians: "If indeed thou ponderest departure in thy heart, glorious Achilles,

and hast no mind at all to save the fleet ships from consuming fire, because that wrath hath entered into thy heart; how can I be left of thee, dear son, alone thereafter? To thee did the old knight Peleus send me the day he sent thee to Agamemnon forth from Phthia, a stripling yet unskilled in equal war and in debate wherein men wax pre-eminent. Therefore sent he me to teach thee all these things, to be both a speaker of words and a doer of deeds. So would I not be left alone of thee, dear son, not even if god himself should take on him to strip my years from me, and make me fresh and young as in the day when first I left Hellas the home of fair women, fleeing from strife against my father Amyntor son of Ormenos: for he was sore angered with me by reason of his lovely-haired concubine, whom he ever cherished, and wronged his wife my mother. So she besought me continually by my knees to go in first unto the concubine, that the old man might be hateful to her. I hearkened to her and did the deed; but my sire was ware thereof forthwith and cursed me mightily, and called the dire Erinyes to look that never should any dear son sprung of my body sit upon my knees: and the gods fulfilled his curse, even Zeus of the underworld and dread Persephone. [Then took I counsel to slay him with the keen sword: but some immortal stayed mine anger, bringing to my mind the people's voice and all the reproaches of men, lest I should be called a father-slayer amid the Achaians.] Then would my soul no more be refrained at all within my breast to tarry in the halls of mine angered father. Now my fellows and my kinsmen came about me with many prayers, and refrained me there within the halls, and slaughtered many goodly sheep and shambling kine with crooked horns; and many swine rich with fat were stretched to singe over the flames of Hephaistos, and wine from that old man's jars was drunken without stint. Nine nights long slept they all night around my body; they kept watch in turn, neither were the fires quenched, one beneath the colonnade of the fenced courtyard and another in the porch before the chamber doors. But when the tenth dark night was come upon me, then burst I my cunningly fitted chamber doors, and issued forth and over-leapt the courtyard fence lightly, unmarked of watchmen and handmaidens. Then fled I far through Hellas of wide lawns, and came to deep-soiled Phthia, mother of flocks, even unto king Peleus; and he received me kindly and cherished me as a father cherisheth his only son, his stripling heir of great possessions; and he made me rich and gave much people to me, and I dwelt in the uttermost

part of Phthia and was king over the Dolopians. Yea, I reared thee to this greatness, thou godlike Achilles, with my heart's love; for with none other wouldest thou go unto the feast, neither take meat in the hall, till that I had set thee upon my knee and stayed thee with the savoury morsel cut first for thee, and put the wine cup to thy lips. Oft hast thou stained the doublet on my breast with sputtering of wine in thy sorry helplessness. Thus I suffered much with thee and much I toiled, being mindful that the gods in nowise created any issue of my body; but I made thee my son, thou godlike Achilles, that thou mayest yet save me from grievous destruction. Therefore, Achilles, rule thy high spirit; neither beseemeth it thee to have a ruthless heart. Even in like manner have we heard the fame of those heroes that were of old, as oft as furious anger came on any; they might be won by gifts and prevailed upon by speech. . . ."

And Achilles fleet of foot made answer and said to him: "Phoinix my father, thou old man fosterling of Zeus, such honour need I in no wise; for I deem that I have been honoured by the judgment of Zeus, which shall abide upon me amid my beaked ships as long as breath tarrieth in my body and my limbs are strong. Moreover I will say this thing to thee and lay thou it to thine heart: trouble not my soul by weeping and lamentation, to do the pleasure of warrior Atreides, neither beseemeth it thee to cherish him, lest thou be hated of me that cherish thee. It were good that thou with me shouldest vex him that vexeth me. Be thou king even as I, and share my sway by halves, but these shall bear my message. So tarry thou here and lay thee to rest in a soft bed, and with break of day will we consider whether to depart unto our own, or to abide."

He spake, and nodded his brow in silence unto Patroklos to spread for Phoinix a thick couch, that the others might bethink them to depart from the hut with speed. Then spake to them Aias, Telamon's godlike son, and said: "Heaven-sprung son of Laertes, Odysseus of many wiles, let us go hence: for methinks the purpose of our charge will not by this journey be accomplished; and we must tell the news, though it be no wise good, with all speed unto the Danaans, that now sit awaiting. But Achilles hath wrought his proud soul to fury within him — stubborn man, that recketh naught of his comrades' love, wherein we worshipped him beyond all men amid the ships — unmerciful! Yet doth a man accept recompense of his brother's murderer or for his dead son; and so the man-slayer for a great price abideth

in his own land, and the kinsman's heart is appeased, and his proud soul, when he hath taken the recompense. But for thee, the gods have put within thy breast a spirit implacable and evil, by reason of one single damsel. And now we offer thee seven damsels, far best of all, and many other gifts besides; entertain thou then a kindly spirit, and have respect unto thine home; because we are guests of thy roof, sent of the multitude of Danaans, and we would fain be nearest to thee and dearest beyond all other Achaians, as many as there be."

And Achilles fleet of foot made answer and said to him: "Aias sprung of Zeus, thou son of Telamon, prince of the folk, thou seemest to speak all this almost after mine own mind; but my heart swelleth with wrath as oft as I bethink me of those things, how Atreides entreated me arrogantly among the Argives, as though I were some worthless sojourner. But go ye and declare my message; I will not take thought of bloody war until that wise Priam's son, noble Hector, come to the Myrmidons' huts and ships, slaying the Argives, and smirch the ships with fire. But about mine hut and black ship I ween that Hector, though he be very eager for battle, shall be refrained."

So said he, and they took each man a two-handled cup, and made libation and went back along the line of ships; and Odysseus led the way. And Patroklos bade his fellows and handmaidens spread with all speed a thick couch as he ordained, fleeces and rugs and fine flock of linen. Then the old man laid him down and tarried for bright Dawn. And Achilles slept in the corner of the morticed hut, and by his side lay a woman that he brought from Lesbos, even Phorbas' daughter fair-cheeked Diomede. And on the other side Patroklos lay, and by his side likewise fair-girdled Iphis, whom noble Achilles gave him at the taking of steep Skyros.

Now when those were come unto Atreides' huts, the sons of the Achaians stood up on this side and on that, and pledged them in cups of gold, and questioned them; and Agamemnon king of men asked them first: "Come now, tell me, Odysseus full of praise, thou great glory of the Achaians; will he save the ships from consuming fire, or said he nay, and hath wrath yet hold of his proud spirit?"

And steadfast goodly Odysseus answered him: "Most noble son of Atreus, Agamemnon king of men, he yonder hath no mind to quench his wrath, but is yet more filled of fury, and spurneth thee and thy gifts. . . ."

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BOOK X

How Diomedes and Odysseus slew Dolon, a spy of the Trojans and themselves spied on the Trojan camp, and took the horses of Rhesos, the Thracian king.

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BOOK XI

Despite the glorious deeds of Agamemnon, the Trojans press hard on the Achaians, and the beginning of evil comes on Patroklos.

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Now Patroklos stood at the doors, a godlike man, and when the old man beheld him, he arose from his shining chair, and took him by the hand, and led him in, and bade him be seated. But Patroklos, from over against him, was for refusing, and spake and said: "No time to sit have I, old man, fosterling of Zeus, nor wilt thou persuade me. Revered and dreaded is he that sent me forth to ask thee who this man is that thou bringest home wounded. Nay, but I know myself, for I see Machaon, shepherd of the host. . . ."

Then knightly Nestor of Gerenia answered: "Wherefore is Achilles thus sorry for the sons of the Achaians, for as many as are wounded with darts? He knoweth not at all what grief hath arisen in the camp: for the best men lie in the ships, wounded by shaft or smitten by spear. Wounded with the shaft is strong Diomedes, son of Tydeus, and smitten is Odysseus, spearman renowned, and Agamemnon, [and Eurypylos hath been shot with an arrow in the thigh,] and this other have I but newly carried out of battle, wounded with an arrow from the bowstring. But Achilles, for all his valiance, careth not for the Danaans, nor pities them at all. Doth he wait till the fleet ships hard by the shore shall burn, maugre the Argives, in the consuming fire, and till we be slain one upon another? For my strength is no longer what it was before in my supple limbs. Would that I were in such youth, and my might as steadfast, as when a strife was set between the Eleians and ourselves, about a raid on the kine; what time I slew Itymoneus, the brave son of Hypeirochos, a dweller in Elis, when I was driving the spoil. And in fighting for his kine was he smitten in the foremost rank by a spear from my hand, and he fell, and about him were the country folk in great fear. And a prey exceeding abundant did we drive together out of the plain, fifty herds of kine, and as many flocks of sheep,

and as many droves of swine, and as many wide flocks of goats, and chestnut horses a hundred and fifty, all mares, and many with their foals at their feet. And these by night we drave within Neleian Pylos to the citadel, and Neleus was glad at heart, for that so much wealth came to me, the first time I went to war. And the heralds cried aloud, with the coming of the dawn, that all men should meet that had a debt owing to them in goodly Elis. And the men that were leaders of the Pylians gathered together and divided all, for to many did the Epeians owe a debt, for few we were, and oppressed, that dwelt in Pylos. For the mighty Herakles had come and oppressed us, in the former years, and all our best men were slain. For twelve sons were we of noble Neleus, whereof I alone was left, and all the others perished. And being lifted up with pride because of these things, the mail-clad Epeians did us despite, and devised deeds of violence. And out of the spoil that old man, even Neleus, took him a herd of kine, and a great flock of sheep, choosing three hundred, and the shepherds with them. For to him was a great debt owing in goodly Elis: four horses, winners of prizes, with their chariot had gone to the games, and were to run for a tripod; but these did Augeias, king of men, hold in bond in that place, but sent away the driver sorrowing for the horses. By which words and deeds was the old man angered, so he chose out much booty, uncountable, and the rest he gave to the people to divide, lest any man should depart deprived by him of his equal share. So we ordered each thing, and offered victims to the gods about the city. . . .

"Such was I, if ever among men I was such an one. But Achilles is for reaping alone the reward of his valour; surely methinks that he will repent, and lament sore when the host perisheth. O friend, surely Menoitios thus gave thee command, on that day when he sent thee out of Phthia to Agamemnon. And we twain were within the house, I and goodly Odysseus, and in the halls heard we all things even as he commanded thee. For we had come to the fair-set halls of Peleus, gathering the host throughout Achaia of the fair dames. There then we found the hero Menoitios within, and thee, and with thee Achilles. And Peleus the Old, the lord of horses, was burning the fat thighs of kine to Zeus, whose joy is in the thunder, in the precinct of his court, and held in his hand a chalice of gold, pouring forth the bright wine upon the burning offerings. And ye were busy about the flesh of the ox, and then stood we in the doorway, and Achilles leaped up in

amazement, and took us by the hand, and led us in, and bade us be seated, and set before us well the entertainment of strangers, all that is their due. But when we had taken delight in eating and drinking, I began the discourse, and bade you follow with us, and ye were right eager, and those twain laid on you many commands. Peleus the Old bade his son Achilles be ever the boldest in fight, and pre-eminent over others, but to thee did Menoitios thus give command, the son of Aktor: 'My child, of lineage is Achilles higher than thou, and thou art elder, but in might he is better far. But do thou speak to him well a word of wisdom, and put it to him gently, and show him what things he should do, and he will obey thee to his profit.' So did the old man give thee command, but thou art forgetful. Nay, but even now speak thou thus and thus to wise-hearted Achilles, if perchance he will obey thee. . . ."

So spake he, and roused his heart within his breast, and he started and ran by the ships to Achilles of the seed of Aiakos. But when Patroklos came in his running to the ships of godlike Odysseus, where was their assembly and place of law, and whereby also were their altars of the gods established, there did Euryplos meet him, Euaimon's son, of the seed of Zeus, wounded in the thigh with an arrow, and limping out of the battle. . . .

BOOK XII

How the Trojans and allies broke within the wall of the Achaians.

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BOOK XIII

Poseidon stirreth up the Achaians to defend the ships. The valour of Idomeneus.

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Even then Idomeneus, though his hair was flecked with grey, called on the Danaans, and leaping among the Trojans, roused their terror. For he slew Othryoneus of Kabesos, a sojourner there, who but lately had followed after the rumour of war, and asked in marriage the fairest of the daughters of Priam, Kassandra, without gifts of wooing, but with promise of a mighty deed, namely that he would drive perforce out of Troy-land the sons of the Achaians. To him the old man Priam promised and appointed that he would give her, so he fought trusting in his promises. And Idomeneus aimed at him with a bright spear

and cast and smote him as he came proudly striding on, and the corslet of bronze that he wore availed not, but the lance stuck in the midst of his belly. And he fell with a crash, and Idomeneus boasted over him, and lifted up his voice, saying: "Othryoneus, verily I praise thee above all mortal men, if indeed thou shalt accomplish all that thou hast promised to Priam, son of Dardanos, that promised thee again his own daughter. Yea, and we likewise would promise as much to thee, and fulfil it, and would give thee the fairest daughter of the son of Atreus, and bring her from Argos, and wed her to thee, if only thou wilt aid us to take the fair-set citadel of Ilios. Nay, follow us that we may make a covenant of marriage by the seafaring ships, for we are no hard exacters of gifts of wooing."

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BOOK XIV

How Sleep and Hera beguiled Zeus to slumber on the heights of Ida, and Poseidon spurred on the Achaians to resist Hector, and how Hector was wounded.

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BOOK XV

Zeus awakening biddeth Apollo revive Hector, and restore the fortune of the Trojans. Fire is thrown on the ship of Protesilaos.

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BOOK XVI

How Patroklos fought in the armor of Achilles, and drove the Trojans from the ships, but was slain at last by Hector.

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BOOK XVII

Of the battle around the body of Patroklos.

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BOOK XVIII

How Achilles grieved for Patroklos, and how Thetis asked for him new armour of Hephaistos; and of the making of the armour.

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Then made answer unto her the lame god of great renown: "Be of good courage, let not these things trouble thy heart.

Would that so might I avail to hide him far from dolorous death, when dread fate cometh upon him, as surely shall goodly armour be at his need, such as all men afterward shall marvel at, whosoever may behold."

Thus saying he left her there and went unto his bellows and turned them upon the fire and bade them work. And the bellows, twenty in all, blew on the crucibles, sending deft blasts on every side, now to aid his labour and now anon howsoever Hephaistos willed and the work went on. And he threw bronze that weareth not into the fire, and tin and precious gold and silver, and next he set on an anvil-stand a great anvil, and took in his hand a sturdy hammer, and in the other he took the tongs.

First fashioned he a shield great and strong, adorning it all over, and set thereto a shining rim, triple, bright-glancing, and therefrom a silver baldrick. Five were the folds of the shield itself; and therein fashioned he much cunning work from his wise heart.

There wrought he the earth, and the heavens, and the sea, and the unwearying sun, and the moon waxing to the full, and the signs every one wherewith the heavens are crowned, Pleiads and Hyads and Orion's might, and the Bear that men call also the Wain, her that turneth in her place and watcheth Orion, and alone hath no part in the baths of Ocean.

Also he fashioned therein two fair cities of mortal men. In the one were espousals and marriage feasts, and beneath the blaze of torches they were leading the brides from their chambers through the city, and loud arose the bridal song. And young men were whirling in the dance, and among them flutes and viols sounded high; and the women standing each at her door were marvelling. But the folk were gathered in the assembly place; for there a strife was arisen, two men striving about the blood-price of a man slain; the one claimed to pay full atonement, expounding to the people, but the other denied him and would take naught; and both were fain to receive arbitrament at the hand of a daysman. And the folk were cheering both, as they took part on either side. And heralds kept order among the folk, while the elders on polished stones were sitting in the sacred circle, and holding in their hands staves from the loud-voiced heralds. Then before the people they rose up and gave judgment each in turn. And in the midst lay two talents of gold, to be given unto him who should utter among them the most righteous doom.

But around the other city were two armies in siege with glittering arms. And two counsels found favour among them, either

to sack the town or to share all with the towns-folk even whatsoever substance the fair city held within. But the besieged were not yet yielding, but arming for an ambushment. On the wall there stood to guard it their dear wives and infant children, and with these the old men; but the rest went forth, and their leaders were Ares and Pallas Athene, both wrought in gold, and golden was the vesture they had on. Goodly and great were they in their armour, even as gods, far seen around, and the folk at their feet were smaller. And when they came where it seemed good to them to lay ambush, in a river bed where there was a common watering-place of herds, there they set them, clad in glittering bronze. And two scouts were posted by them, afar off to spy the coming of flocks and of oxen with crooked horns. And presently came the cattle, and with them two herdsmen playing on pipes, that took no thought of the guile. Then the others when they beheld these ran upon them and quickly cut off the herds of oxen and fair flocks of white sheep, and slew the shepherds withal. But the besiegers, as they sat before the speech-places and heard much din among the oxen, mounted forthwith behind their high-stepping horses, and came up with speed. Then they arrayed their battle and fought beside the river banks, and smote one another with bronze-shod spears. And among them mingled Strife and Tumult, and fell Death, grasping one man alive fresh-wounded, another without wound, and dragging another dead through the mellay by the feet; and the raiment on her shoulders was red with the blood of men. Like living mortals they hurled together and fought, and haled the corpses each of the other's slain.

Furthermore he set in the shield a soft fresh-ploughed field, rich tilth and wide, the third time ploughed; and many ploughers therein drave their yokes to and fro as they wheeled about. Whensoever they came to the boundary of the field and turned, then would a man come to each and give into his hands a goblet of sweet wine, while others would be turning back along the furrows, fain to reach the boundary of the deep tilth. And the field grew black behind and seemed as it were a-ploughing, albeit of gold, for this was the great marvel of the work.

Furthermore he set therein the demesne-land of a king, where hinds were reaping with sharp sickles in their hands. Some armfuls along the swathe were falling in rows to the earth, whilst others the sheaf-binders were binding in twisted bands of straw. Three sheaf-binders stood over them, while behind boys gathering corn and bearing it in their arms gave it constantly to the binders;

and among them the king in silence was standing at the swathe with his staff, rejoicing in his heart. And henchmen apart beneath an oak were making ready a feast, and preparing a great ox they had sacrificed; while the women were strewing much white barley to be a supper for the hinds.

Also he set therein a vineyard teeming plenteously with clusters, wrought fair in gold; black were the grapes, but the vines hung throughout on silver poles. And around it he ran a ditch of cyanus, and round that a fence of tin; and one single pathway led to it, whereby the vintagers might go when they should gather the vintage. And maidens and striplings in childish glee bare the sweet fruit in plaited baskets. And in the midst of them a boy made pleasant music on a clear-toned viol, and sang thereto a sweet Linos-song with delicate voice; while the rest with feet falling together kept time with the music and song.

Also he wrought therein a herd of kine with upright horns, and the kine were fashioned of gold and tin, and with lowing they hurried from the byre to pasture beside a murmuring river, beside the waving reed. And herdsmen of gold were following with the kine, four of them, and nine dogs fleet of foot came after them. But two terrible lions among the foremost kine had seized a loud-roaring bull that bellowed mightily as they haled him, and the dogs and the young men sped after him. The lions rending the great bull's hide were devouring his vitals and his black blood; while the herdsmen in vain tarred on their fleet dogs to set on, for they shrank from biting the lions but stood hard by and barked and swerved away.

Also the glorious lame god wrought therein a pasture in a fair glen, a great pasture of white sheep, and a steading, and roofed huts, and folds.

Also did the glorious lame god devise a dancing-place like unto that which once in wide Knosos Daidalos wrought for Ariadne of the lovely tresses. There were youths dancing and maidens of costly wooing, their hands upon one another's wrists. Fine linen the maidens had on, and the youths well-woven doublets faintly glistening with oil. Fair wreaths had the maidens, and the youths daggers of gold hanging from silver baldrics. And now would they run round with deft feet exceeding lightly, as when a potter sitting by his wheel that fitteth between his hands maketh trial of it whether it run: and now anon they would run in lines to meet each other. And a great company stood round the lovely dance in joy; [and among them a divine minstrel was making music on his

lyre,] and through the midst of them, leading the measure, two tumblers whirled.

Also he set therein the great might of the River of Ocean around the uttermost rim of the cunningly-fashioned shield.

Now when he had wrought the shield great and strong, then wrought he him a corslet brighter than a flame of fire, and he wrought him a massive helmet to fit his brows, goodly and graven, and set thereon a crest of gold, and he wrought him greaves of pliant tin.

So when the renowned lame god had finished all the armour, he took and laid it before the mother of Achilles. Then she like a falcon sprang down from snowy Olympus, bearing from Hephaistos the glittering arms.

BOOK XIX

How Achilles and Agamemnon were reconciled before the assembly of the Achaians, and Achilles went forth with them to battle.

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BOOK XX

How Achilles made havoc among the men of Troy.

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BOOK XXI

How Achilles fought with the River, and chased the men of Troy within their gates.

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BOOK XXII

How Achilles fought with Hector, and slew him, and brought his body to the ships.

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BOOK XXIII

Of the funeral of Patroklos, and the funeral games.

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BOOK XXIV

How the body of Hector was ransomed, and of his funeral.

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Chapter II

THE ODYSSEY OF HOMER[1]

BOOK I

In a Council of the Gods, Poseidon absent, Pallas procureth an order for the restitution of Odysseus; and appearing to his son Telemachus, in human shape, adviseth him to complain of the Wooers before the Council of the people, and then go to Pylos and Sparta to inquire about his father.

. . . Then from the heights of Olympus she came glancing down, and she stood in the land of Ithaca, at the entry of the gate of Odysseus, on the threshold of the courtyard, holding in her hand the spear of bronze, in the semblance of a stranger, Mentes, the captain of the Taphians. And there she found the lordly wooers: now they were taking their pleasure at draughts in front of the doors, sitting on hides of oxen, which themselves had slain. And of the henchmen and the ready squires, some were mixing for them wine and water in bowls, and some again were washing the tables with porous sponges and were setting them forth, and others were carving flesh in plenty.

And godlike Telemachus was far the first to descry her, for he was sitting with a heavy heart among the wooers dreaming on his good father, if haply he might come somewhence, and make a scattering of the wooers there throughout the palace, and himself get honor and bear rule among his own possessions. Thinking thereupon, as he sat among wooers, he saw Athene — and he went straight to the outer porch, for he thought it blame in his heart that a stranger should stand long at the gates: and halting nigh her he clasped her right hand and took from her the spear of bronze, and uttered his voice and spake unto her winged words:

"Hail, stranger, with us thou shalt be kindly entreated, and thereafter, when thou hast tasted meat, thou shall tell us that whereof thou hast need."

Therewith he led the way, and Pallas Athene followed. And when they were now within the lofty house, he set her spear that

[1] [From the prose translation by S. H. Butcher and A. Lang, London, 1912, with the consent of Macmillan and Co., Limited, publisher.]

he bore against a tall pillar, within the polished spear-stand, where stood many spears besides, even those of Odysseus of the hardy heart; and he led the goddess and seated her on a goodly carven chair, and spread a linen cloth thereunder, and beneath was a footstool for the feet. For himself he placed an inlaid seat hard by, apart from the company of the wooers, lest the stranger should be disquieted by the noise and should have a loathing for the meal, being come among overweening men, and also that he might ask him about his father that was gone from his home.

Then a handmaid bare water for the washing of hands in a goodly golden ewer, and poured it forth over a silver basin to wash withal, and drew to their side a polished table. And a grave dame bare wheaten bread and set it by them, and laid on the board many dainties, giving freely of such things as she had by her. And a carver lifted and placed by them platters of divers kinds of flesh, and nigh them he set golden bowls, and a henchman walked to and fro pouring out to them the wine.

Then in came the lordly wooers; and they sat them down in rows on chairs and on high seats, and henchmen poured water on their hands, and maidservants piled wheaten bread by them in baskets, and pages crowned the bowls with drink; and they stretched forth their hands upon the good cheer spread before them. Now when the wooers had put from them the desire of meat and drink, they minded them of other things, even of the song and dance: for these are the crown of the feast. And a henchman placed a beauteous lyre in the hands of Phemius, who was minstrel to the wooers despite his will. Yea and as he touched the lyre he lifted up his voice in sweet song.

But Telemachus spake unto grey-eyed Athene, holding his head close to her that those others might not hear: "Dear stranger, wilt thou of a truth be wroth at the word that I shall say? Yonder men verily care for such things as these, the lyre and song, lightly, as they that devour the livelihood of another without atonement, of that man whose white bones, it may be, lie wasting in the rain upon the mainland, or the billow rolls them in the brine. Were but these men to see him returned to Ithaca, they all would pray rather for greater speed of foot than for gain of gold and raiment. But now he hath perished, even so, an evil doom, and for us is no comfort, no, not though any of earthly men should say that he will come again. Gone is the day of his returning! But come declare me this, and tell me all plainly: Who art thou of the sons of men, and whence? Where is thy city, where are they that begat thee?

Say, on what manner of ship didst thou come, and how did sailors bring thee to Ithaca, and who did they avow themselves to be, for in nowise do I deem that thou camest hither by land. And herein tell me true, that I may know for a surety whether thou art a newcomer, or whether thou art a guest of the house, seeing that many were the strangers that came to our home, for that *he* too had voyaged much among men."

Then the goddess, grey-eyed Athene, answered him: "Yea now, I will plainly tell thee all. I avow me to be Mentes, son of wise Anchialus, and I bear rule among the Taphians, lovers of the oar. And now am I come to shore, as thou seest, with ship and crew, sailing over the wine-dark sea, unto men of strange speech, even to Temesa, in quest of copper, and my cargo is shining iron. And there my ship is lying toward the upland, away from the city, in the harbour of Rheithron beneath wooded Neïon: and we declare ourselves to be friends one of the other, and of houses friendly, from of old. . . ."

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Then the goddess, grey-eyed Athene, spake unto him, and said: "Surely no nameless lineage have the gods ordained for thee in days to come, since Penelope bore thee so goodly a man. But come, declare me this, and tell it all plainly. What feast, nay, what rout is this? What hast thou to do therewith? Is it a clan drinking, or a wedding feast, for here we have no banquet where each man brings his share? In such wise, flown with insolence, do they seem to me to revel wantonly through the house: and well might any man be wroth to see so many deeds of shame, whatso wise man came among them."

Then wise Telemachus answered her, and said: "Sir, forasmuch as thou questionest me of these things and inquirest thereof, our house was once like to have been rich and honourable, while yet that man was among his people. But now the gods willed it otherwise, in evil purpose, who have made him pass utterly out of sight as no man ever before. Truly I would not even for his death make so great sorrow, had he fallen among his fellows in the land of the Trojans, or in the arms of his friends when he had wound up the clew of war. Then would the whole Achæan host have builded him a barrow, and even for his son would he have won great glory in the after days. But now the spirits of the storm have swept him away inglorious. He is gone, lost to sight and hearsay, but for me hath he left anguish and lamentation; nor henceforth is it

for him alone that I mourn and weep, since the gods have wrought for me other sore distress. For all the noblest that are princes in the isles, in Dulichium and Same and wooded Zacynthus, and as many as lord it in rocky Ithaca, all these woo my mother and waste my house. But as for her she neither refuseth the hated bridal, nor hath the heart to make an end: so they devour and minish my house, and ere long will they make havoc likewise of myself."

Then in heavy displeasure spake unto him Pallas Athene: "God help thee! thou art surely sore in need of Odysseus that is afar, to stretch forth his hands upon the shameless wooers. . . . But I charge thee to take counsel how thou mayest thrust forth the wooers from the hall. Come now, mark and take heed unto my words. On the morrow call the Achæan lords to the assembly, and declare thy saying to all, and take the gods to witness. As for the wooers bid them scatter them each one to his own, and for thy mother, if her heart is moved to marriage, let her go back to the hall of that mighty man her father, and her kinsfolk will furnish a wedding feast, and array the gifts of wooing exceeding many, all that should go back with a daughter dearly beloved. And to thyself I will give a word of wise counsel, if perchance thou wilt hearken. Fit out a ship, the best thou hast, with twenty oarsmen, and go to inquire concerning thy father that is long afar, if perchance any man shall tell thee aught, or if thou mayest hear the voice from Zeus, which chiefly brings tidings to men. Get thee first to Pylos and inquire of goodly Nestor, and from thence to Sparta to Menelaus of the fair hair, for he came home the last of the mail-coated Achæans. If thou shalt hear news of the life and the returning of thy father, then verily thou mayest endure the wasting for yet a year. But if thou shalt hear that he is dead and gone, return then to thine own dear country and pile his mound, and over it pay burial rites, full many as is due, and give thy mother to a husband. But when thou hast done this and made an end, thereafter take counsel in thy mind and heart, how thou mayest slay the wooers in thy halls, whether by guile or openly. . . ."

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[Athene] . . . "Hold me now no longer, that am eager for the way. But whatsoever gift thine heart shall bid thee give me, when I am on my way back let it be mine to carry home: bear from thy stores a gift right goodly, and it shall bring thee the worth thereof in return."

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Now the renowned minstrel was singing to the wooers, and they sat listening in silence; and his song was of the pitiful return of the Achæans, that Pallas Athene laid on them as they came forth from Troy. And from her upper chamber the daughter of Icarius, wise Penelope, caught the glorious strain, and she went down the high stairs from her chamber, not alone, for two of her handmaids bare her company. . . . Then she fell a weeping, and spake unto the divine minstrel:

". . . Cease from this pitiful strain, that ever wastes my heart within my breast, since to me above all women hath come a sorrow comfortless. . . ." Then wise Telemachus answered her, and said: "O my mother, why then dost thou grudge the sweet minstrel to gladden us as his spirit moves him? . . . Let thy heart and mind endure to listen, for not Odysseus only lost in Troy the day of his returning, but many another likewise perished. Howbeit go to thy chamber and mind thine own housewiferies, the loom and distaff, and bid thy handmaids ply their tasks. But speech shall be for men, for all, but for me in chief; for mine is the lordship in the house."

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Now the wooers clamoured throughout the shadowy halls. . . . And wise Telemachus first spake among them: . . .

Then Antinous, son of Eupeithes, answered him: "Telemachus, in very truth the gods themselves instruct thee to be proud of speech and boldly to harangue. Never may Cronion make thee king in seagirt Ithaca, which thing is of inheritance thy right!"

Then wise Telemachus answered him, and said: ". . . Nay, verily it is no ill thing to be a king: the house of such an one quickly waxeth rich and himself is held in greater honour. Howsoever there are many other kings of the Achæans in seagirt Ithaca, kings young and old; someone of them shall surely have this kingship since goodly Odysseus is dead. But as for me, I will be lord of our own house and thralls, that goodly Odysseus gat me with his spear."

Then Eurymachus, son of Polybus, answered him, saying: "Telemachus, on the knees of the gods it surely lies, what man is to be king over the Achæans in seagirt Ithaca. But mayest thou keep thine own possessions and be lord in thine own house! . . ."

. . . Now the wooers turned them to the dance and the delightsome song, and made merry, and waited till evening should come on. . . .

But Telemachus, where his chamber was builded high up in the fair court, in a place with wide prospect, thither betook him to his bed, pondering many thoughts in his mind; and with him went trusty Eurycleia, and bare for him torches burning. She was the daughter of Ops, son of Peisenor, and Laertes bought her on a time with his wealth, while as yet she was in her first youth, and gave for her the worth of twenty oxen. . . .

BOOK II

Telemachus complains in vain, and borrowing a ship, goes secretly to Pylos by night. And how he was there received.

Now as soon as early Dawn shone forth, the rosy-fingered, the dear son of Odysseus gat him up from his bed, and put on his raiment and cast his sharp sword about his shoulder, and beneath his smooth feet he bound his goodly sandals, and stept forth from his chamber in presence like a god. And straightway he bade the clear-voiced heralds to call the long-haired Achæans to the assembly. And the heralds called the gathering, and the Achæans were assembled quickly. Now when they were gathered and come together, he went on his way to the assembly holding in his hand a spear of bronze, — not alone he went, for two swift hounds bare him company. Then Athene shed on him a wondrous grace, and all the people marvelled at him as he came. And he sat him in his father's seat and the elders gave place to him.

Then the lord Ægyptus spake among them first; bowed was he with age, and skilled in things past number: . . . "Hearken now to me, ye men of Ithaca, to the word that I shall say. Never hath our assembly or session been since the day that goodly Odysseus departed in the hollow ships. And now who was minded thus to assemble us? On what man hath such sore need come, of the young men or of the elder born? Hath he heard some tidings of the host now returning, which he might plainly declare to us, for that he first learned thereof, or doth he show forth and tell some other matter of the common weal? Methinks he is a true man — good luck be with him! Zeus vouchsafe him some good thing in this turn, even all his heart's desire!"

So spake he, and the dear son of Odysseus was glad at the omen of the word; nor sat he now much longer, but he burned to speak, and he stood in mid assembly; and the herald Peisenor, skilled in sage counsels, placed the staff in his hands. Then he spake, accosting the old man first:

"Old man, he is not far off, and soon shalt thou know it for thyself, he who called the folk together, even I: for sorrow hath come to me in chief. Neither have I heard any tidings of the host now returning, which I may plainly declare to you, for that I first learned thereof; neither do I show forth or tell any other matter of the common weal, but mine own need, for that evil hath befallen my house, a double woe. First, I have lost my noble sire, who sometime was king among you here, and was gentle as a father; and now is there an evil yet greater far, which surely shall soon make grievous havoc of my whole house and ruin all my livelihood. My mother did certain wooers beset sore against her will, even the sons of those men that here are the noblest. They are too craven to go to the house of her father Icarius, that he may himself set the bride-price for his daughter, and bestow her on whom he will, even on him who finds favour in his sight. But they resorting to our house day by day sacrifice oxen and sheep and fat goats, and keep revel, and drink the dark wine recklessly, and lo, our great wealth is wasted, for there is no man now alive such as Odysseus was, to keep ruin from the house. As for me I am nowise strong like him to ward mine own; verily to the end of my days shall I be a weakling and all unskilled in prowess. Truly I would defend me if but strength were mine; for deeds past sufferance have now been wrought, and now my house is wasted utterly beyond pretence of right. Resent it in your own hearts, and have regard to your neighbours who dwell around, and tremble ye at the anger of the gods, lest haply they turn upon you in wrath at your evil deeds. I pray you by Olympian Zeus and by Themis, who looseth and gathereth the meetings of men, let be, my friends, and leave me alone to waste in bitter grief; — unless it so be that my father, the good Odysseus, out of evil heart wrought harm to the goodly-greaved Achæans, in quittance whereof ye now work me harm out of evil hearts, and spur on these men. Better for me that ye yourselves should eat up my treasures and my flocks. Were *ye* so to devour them, ere long would some recompense be made, for we would urge our plea throughout the town, begging back our substance, until all should be restored. But now without remedy are the pains that ye lay up in my heart."

So spake he in wrath, and dashed the staff to the ground, and brake forth in tears; and pity fell on all the people. Then all the others held their peace, and none had the heart to answer Telemachus with hard words, but Antinous alone made answer, saying:

"Telemachus, proud of speech and unrestrained in fury, what is this thou hast said to put us to shame, and wouldest fasten on us reproach? Behold the fault is not in the Achæan wooers, but in thine own mother, for she is the craftiest of women. For it is now the third year, and the fourth is fast going by, since she began to deceive the minds of the Achæans in their breasts. She gives hope to all, and makes promises to every man, and sends them messages, but her mind is set on other things. . . . But as for thee, the wooers make thee answer thus, that thou mayest know it in thine own heart, thou and all the Achæans! Send away thy mother, and bid her be married to whomsoever her father commands, and whoso is well pleasing unto her. . . ."

Then wise Telemachus answered him, saying: "Antinous, I may in no wise thrust forth from the house, against her will, the woman that bare me, that reared me: while as for my father he is abroad on the earth, whether he be alive or dead. Moreover it is hard for me to make heavy restitution to Icarius, as needs I must, if of mine own will I send my mother away. For I shall have evil at his hand, at the hand of her father, and some god will give me more besides, for my mother will call down the dire Avengers as she departs from the house, and I shall have blame of men; surely then I will never speak this word. Nay, if your own heart, even yours, is indignant, quit ye my halls, and busy yourselves with other feasts, eating your own substance, and going in turn from house to house. But if ye deem this a likelier and a better thing, that one man's goods should perish without atonement, then waste ye as ye will: and I will call upon the everlasting gods, if haply Zeus may grant that acts of recompense be made: so should ye hereafter perish in the halls without atonement."

So spake Telemachus, and in answer to his prayer did Zeus, of the far-borne voice, send forth two eagles in flight, from on high, from the mountain crest. . . . And the men marvelled at the birds when they had sight of them, and pondered in their hearts the things that should come to pass. Yea and the old man, the lord Halitherses son of Mastor spake among them, for he excelled his peers in knowledge of birds, and in uttering words of fate: . . . "Hearken to me now, ye men of Ithaca, to the word that I shall say: and mainly to the wooers do I show forth and tell these things, seeing that a mighty woe is rolling upon them. . . . For I prophesy not as one unproved, but with sure knowledge; verily, I say, that for him all things now are come to pass, even as I told him, what time the Argives embarked for Ilios, and with them

went the wise Odysseus. I said that after sore affliction, with the loss of all his company, unknown to all, in the twentieth year he should come home. And behold, all these things now have an end."

And Eurymachus, son of Polybus, answered him, saying: "Go now, old man, get thee home and prophesy to thine own children, lest haply they suffer harm hereafter: but herein am I a far better prophet than thou. . . . And I myself will give a word of counsel to Telemachus in presence of you all. Let him command his mother to return to her father's house; and her kinsfolk will furnish a wedding feast, and array the gifts of wooing, exceeding many, all that should go back with a daughter dearly beloved. For ere that, I trow, we sons of the Achæans will not cease from our rough wooing, since, come what may, we fear not any man, no, not Telemachus, full of words though he be, nor soothsaying do we heed, whereof thou, old man, pratest idly, and art hated yet the more. His substance too shall be woefully devoured, nor shall recompense ever be made, so long as she shall put off the Achæans in the matter of her marriage; while we in expectation, from day to day, vie one with another for the prize of her perfection, nor go we after other women whom it were meet that we should each one wed."

Then wise Telemachus answered him, saying: "Eurymachus, and ye others, that are lordly wooers, I entreat you no more concerning this nor speak thereof, for the gods have knowledge of it now and all the Achæans. But come, give me a swift ship and twenty men, who shall accomplish for me my voyage to and fro. . . . If I shall hear news of the life and the returning of my father, then verily I may endure the wasting for yet a year; but if I shall hear that he is dead and gone, let me then return to my own dear country, and pile his mound, and over it pay burial rites full many as is due, and I will give my mother to a husband."

BOOK III

Nestor entertains Telemachus at Pylos and tells him how the Greeks departed from Troy; and sends him for further information to Sparta.

[Telemachus]. . . . "But now I would question Nestor, and ask him of another matter, as one who above all men knows judgments and wisdom: for thrice, men say, he hath been king through the generations of men; yea, like an immortal he seems to me to look upon. . . ."

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So soon as early Dawn shone forth, the rosy-fingered, Nestor of Gerenia, lord of chariots, gat him up from his bed, and he went forth and sat him down upon the smooth stones, which were before his lofty doors, all polished, white and glistening, whereon Neleus sat of old, in counsel the peer of the gods. . . . And about him his sons were gathered and come together, issuing from their chambers, Echephron and Stratius, and Perseus and Aretus and the godlike Thrasymedes. And sixth and last came the hero Peisistratus. And they led godlike Telemachus and set him by their side, and Nestor of Gerenia, lord of chariots, spake first among them. . . .

BOOK IV

Telemachus's entertainment at Sparta, where Menelaus tells him what befell many of the Greeks on their return; that Odysseus was with Calypso in the isle Ogygia, as he was told by Proteus.

And they came to Lacedæmon lying low among the caverned hills, and drave to the dwelling of renowned Menelaus. Him they found giving a feast in his house to many friends of his kin, a feast for the wedding of his noble son and daughter. His daughter he was sending to the son of Achilles, cleaver of the ranks of men, for in Troy he first had promised and covenanted to give her, and now the gods were bringing about their marriage. So now he was speeding her on her way with chariot and horses, to the famous city of the Myrmidons, among whom her lord bare rule. And for his son he was bringing to his home the daughter of Alector out of Sparta, for his well-beloved son, strong Megapenthes, born of a slave woman, for the gods no more showed promise of seed to Helen, from the day that she bare a lovely child, Hermione, as fair as golden Aphrodite. So they were feasting through the great vaulted hall, the neighbours and the kinsmen of renowned Menelaus, making merry; and among them a divine minstrel was singing to the lyre, and as he began the song two tumblers in the company whirled through the midst of them.

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[Menelaus]. "Taste ye food and be glad, and thereafter when ye have supped, we will ask what men ye are; for the blood of your parents is not lost in you, but ye are of the line of men that are sceptred kings, the fosterlings of Zeus; for no churls could beget sons like you."

So spake he, and took and set before them the fat ox-chine

roasted, which they had given him as his own mess by way of honour. And they stretched forth their hands upon the good cheer set before them. Now when they had put from them the desire of meat and drink Telemachus spake to the son of Nestor, holding his head close to him, that those others might not hear:

"Son of Nestor, delight of my heart, mark the flashing of bronze through the echoing halls, and the flashing of gold and of amber and of silver and of ivory. Such like, methinks, is the court of Olympian Zeus within, for the world of things that are here; wonder comes over me as I look thereon."

And as he spake Menelaus of the fair hair was ware of him, and uttering his voice spake to them winged words:

"Children dear, of a truth no one of mortal men may contend with Zeus, for his mansions and his treasures are everlasting: but of men there may be who will vie with me in treasure, or there may be none. Yea, for after many a woe and wanderings manifold, I brought my wealth home in ships, and in the eighth year came hither. I roamed over Cyprus and Phœnicia and Egypt, and reached the Æthiopians and Sidonians and Erembi and Libya, where lambs are horned from the birth. For there the ewes yean thrice within the full circle of a year; there neither lord nor shepherd lacketh aught of cheese or flesh or of sweet milk, but ever the flocks yield store of milk continual. While I was yet roaming in those lands, gathering much livelihood, meantime another slew my brother privily, at unawares, by the guile of his accursed wife. Thus, look you, I have no joy of my lordship among these my possessions: and ye are like to have heard hereof from your fathers, whosoever they be, for I have suffered much and let a house go to ruin that was stablished fair, and had in it much choice substance. I would that I had but a third part of those my riches, and dwelt in my halls, and that those men were yet safe, who perished of old in the wide land of Troy, far from Argos, the pastureland of horses. . . ."

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[Menelaus repeats the story of the death of Agamemnon, his brother, as told by Proteus]. "But now when he was like soon to reach the steep mount of Malea, lo, the storm wind snatched him away and bore him over the teeming deep, making great moan, to the border of the country where of old Thyestes dwelt, but now Ægisthus abode there, the son of Thyestes. But when thence too there showed a good prospect of safe returning, and

the gods changed the wind to a fair gale, and they had reached home, then verily did Agamemnon set foot with joy upon his country's soil, and as he touched his own land he kissed it, and many were the hot tears he let fall, for he saw his land and was glad. And it was so that the watchman spied him from his tower, the watchman whom crafty Ægisthus had led and posted there, promising him for a reward two talents of gold. Now he kept watch for the space of a year, lest Agamemnon should pass by him when he looked not, and mind him of his wild prowess. So he went to the house to bear the tidings to the shepherd of the people. And straightway Ægisthus contrived a cunning treason. He chose out twenty of the best men in the township, and set an ambush, and on the further side of the hall he commanded to prepare a feast. Then with chariot and horses he went to bid to the feast Agamemnon, shepherd of the people; but caitiff thoughts were in his heart. He brought him up to his house, all unwitting of his doom, and when he had feasted him slew him, as one slayeth an ox at the stall. And none of the company of Atreides that were of his following were left, nor any of the men of Ægisthus, but they were all killed in the halls."

BOOK V

The Gods in council command Calypso by Hermes to send away Odysseus on a raft of trees; and Poseidon, returning from Ethiopia and seeing him on the coast of Phæacia, scattered his raft; and how by the help of Ino he was thrown ashore, and slept on a heap of dry leaves till the next day.

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BOOK VI

Nausicaa going to a river near that place to wash the clothes of her father, mother, and brethren, while the clothes were drying played with her maids at ball; and Odysseus coming forth is fed and clothed, and led on his way to the house of her father, King Alcinous.

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BOOK VII

Odysseus being received at the house of the king Alcinous, the queen after supper, taking notice of his garments, gives him occasion to relate his passage thither on the raft. Alcinous promises him a convoy for the morrow.

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BOOK VIII

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The next day's entertainment of Odysseus, where he sees them contend in wrestling and other exercises, and upon provocation took up a greater stone than that which they were throwing, and overthrew them all. Alcinous and the lords give him presents. And how the king asked his name, his country, and his adventures.

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Then it was that goodly Odysseus spake unto Alcinous: "My Lord Alcinous, most notable among all the people, thou didst boast thy dancers to be the best in the world, and lo, thy words are fulfilled; I wonder as I look on them."

So spake he, and the mighty king Alcinous rejoiced and spake at once among the Phæacians, masters of the oar:

"Hearken ye, captains and counsellors of the Phæacians, this stranger seems to me a wise man enough. Come then, let us give him a stranger's gift, as is meet. Behold, there are twelve glorious princes who rule among this people and bear sway, and I myself am the thirteenth. Now each man among you bring a fresh robe and a doublet, and a talent of fine gold, and let us speedily carry all these gifts together, that the stranger may take them in his hands, and go to supper with a glad heart. As for Euryalus let him yield amends to the man himself with soft speech and with a gift, for his was no gentle saying."

So spake he, and they all assented thereto, and would have it so. And each one sent forth his henchman to fetch his gift, and Euryalus answered the king and spake, saying:

"My lord Alcinous, most notable among all the people, I will make atonement to thy guest according to thy word. I will give him a hanger all of bronze, with a silver hilt thereto, and a sheath of fresh-sawn ivory covers it about, and it shall be to him a thing of price."

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BOOK IX

Odysseus relates, first, what befell him amongst the Cicones at Ismarus; secondly, amongst the Lotophagi; thirdly, how he was used by the Cyclops Polyphemus.

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". . . Thence we sailed onward stricken at heart. And we came to the land of the Cyclopes, a froward and a lawless folk, who trusting to the deathless gods plant not aught with their

hands, neither plough: but, behold, all these things spring for them in plenty, unsown and untilled, wheat, and barley, and vines, which bear great clusters of the juice of the grape, and the rain of Zeus gives them increase. These have neither gatherings for council nor oracles of law, but they dwell in hollow caves on the crests of the high hills, and each one utters the law to his children and his wives, and they reck not one of another. . . .

"Now when we had come to the land that lies hard by, we saw a cave on the border near to the sea, lofty and roofed over with laurels, and there many flocks of sheep and goats were used to rest. And about it a high outer court was built with stones, deep bedded, and with tall pines and oaks with their high crown of leaves. And a man was wont to sleep therein, of monstrous size, who shepherded his flocks alone and afar, and was not conversant with others, but dwelt apart in lawlessness of mind. Yea, for he was a monstrous thing and fashioned marvellously, nor was he like to any man that lives by bread, but like a wooded peak of the towering hills, which stands out apart and alone from others.

". . . . Now I had with me a goat skin of the dark wine and sweet, which Maron, son of Euanthes, had given me, the priest of Apollo, the god that watched over Ismarus. And he gave it, for that we had protected him with his wife and child reverently; for he dwelt in a thick grove of Phœbus Apollo. . . .

"With this wine I filled a great skin, and bare it with me, and corn too I put in a wallet, for my lordly spirit straightway had a boding that a man would come to me, a strange man, clothed in mighty strength, one that knew neither dooms, nor ordinances of law."

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BOOK X

Odysseus, his entertainment by Æolus, of whom he received a fair wind for the present, and all the rest of the winds tied up in a bag; which his men untying, flew out, and carried him back to Æolus, who refused to receive him. His adventure at Lestrygonia with Antiphates, where of twelve ships he lost eleven, men and all. How he went thence to the Isle of Æa, where half of his men were turned by Circe into swine, and how he went himself, and by the help of Hermes recovered them and stayed with Circe a year.

"Then we came to the isle Æolian, where dwelt Æolus, son of Hippotas, dear to the deathless gods, in a floating island, and all about it is a wall of bronze unbroken, and the cliff runs up sheer from the sea. His twelve children too abide there in his halls,

six daughters and six lusty sons; and, behold, he gave his daughters to his sons to wife. And they feast evermore by their dear father and their kind mother, and dainties innumerable lie ready to their hands. . . ."

BOOK XI

Odysseus, his descent into hell, and discourses with the ghosts of the deceased heroes.

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"There then I saw Minos, glorious son of Zeus, wielding a golden sceptre, giving sentence from his throne to the dead, while they sat and stood around the prince, asking his dooms through the wide-gated house of Hades."

BOOK XII

Odysseus, his passage by the Sirens, and by Scylla and Charybdis. The sacrilege committed by his men in the isle Thrinacia. The destruction of his ships and men. How he swam on a plank nine days together and came to Ogygia, where he stayed seven years with Calypso.

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BOOK XIII

Odysseus, sleeping, is set ashore at Ithaca by the Phæacians, and waking knows it not. Pallas, in the form of a shepherd, helps to hide his treasure. The ship that conveyed him is turned into a rock, and Odysseus by Pallas is instructed what to do, and transformed into an old beggarman.

. . . Then Athene came nigh him in the guise of a young man, the herdsman of a flock, a young man most delicate, such as are the sons of kings.

. . . And he [Odysseus] uttered his voice and spake unto her winged words; yet he did not speak the truth, but took back the word that was on his lips, for quick and crafty was his wit within his breast:

"Of Ithaca have I heard tell, even in broad Crete, far over the seas; and now have I come hither myself with these my goods. And I left as much again with my children, when I turned outlaw for the slaying of the dear son of Idomeneus, Orsilochus, swift of foot, who in wide Crete was the swiftest of all men that live by bread. Now he would have despoiled me of all that booty of Troy, for the which I had endured pain of heart, in passing through the wars of men, and the grievous waves of the sea, for this cause

that I would not do a favour to his father, and make me his squire in the land of the Trojans, but commanded other fellowship of mine own. So I smote him with a bronze-shod spear as he came home from the field, lying in ambush for him by the wayside, with one of my companions. And dark midnight held the heavens, and no man marked us, but privily I took his life away. Now after I had slain him with the sharp spear, straightway I went to a ship and besought the lordly Phœnicians, and gave them spoil to their hearts' desire. I charged them to take me on board, and land me at Pylos or at goodly Elis where the Epeans bear rule. . . ."

BOOK XIV

Odysseus, in the form of a beggar, goes to Eumæus, the master of his swine, where he is well used and tells a feigned story, and informs himself of the behaviour of the wooers.

But Odysseus fared forth from the haven by the rough track, up the wooded country and through the heights, where Athene had showed him that he should find the goodly swineherd, who cared most for his substance of all the thralls that goodly Odysseus had gotten.

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[Odysseus]. "My friend, who was it then that bought thee with his wealth, a man so exceeding rich and mighty as thou declarest? Thou saidest that he perished to get atonement for Agamemnon; tell me, if perchance I may know him, being such an one as thou sayest. For Zeus, methinks, and the other deathless gods know whether I may bring tidings of having seen him; for I have wandered far." . . .

[Eumæus] . . . . "But come, old man, do thou tell me of thine own troubles. And herein tell me true, that I may surely know. Who art thou of the sons of men, and whence? Where is thy city, where are they that begat thee? Say on what manner of ship didst thou come, and how did sailors bring thee to Ithaca, and who did they avow them to be? For in nowise do I deem that thou camest hither by land."

And Odysseus of many counsels answered him saying: ". . . I avow that I come by lineage from wide Crete, and am the son of a wealthy man. And many other sons he had born and bred in the halls, lawful-born of a wedded wife; but the mother that bare me was a concubine bought with a price. Yet Castor son of Hylax, of whose blood I avow me to be, gave me no less honour than his

lawful sons. Now he at that time got worship even as a god from the Cretans in the land, for wealth and riches and sons renowned. Howbeit the fates of death bare him away to the house of Hades, and his gallant sons divided among them his living and cast lots for it. But to me they gave a very small gift, and assigned me a dwelling, and I took unto me a wife, the daughter of men that had wide lands, by reason of my valour, for that I was no weakling nor a dastard; but now all my might has failed me, yet even so I deem that thou mightest guess from seeing the stubble what the grain has been, for of trouble I have plenty and to spare. But then verily did Ares and Athene give me boldness and courage to hurl through the press of men, whensoever I chose the best warriors for an ambush, sowing the seeds of evil for my foes; no boding of death was ever in my lordly heart, but I would leap out the foremost and slay with the spear whoso of my foes was less fleet of foot than I. Such an one was I in war, but the labour of the field I never loved, nor home-keeping thrift, that breeds brave children, but galleys with their oars were dear to me, and wars and polished shafts and darts — baneful things whereat others use to shudder. But that, methinks, was dear to me which the god put in my heart, for divers men take delight in divers deeds. For ere ever the sons of the Achæans had set foot on the land of Troy, I had nine times been a leader of men and of swift-faring ships against a strange people, and wealth fell ever to my hands. Of the booty I would choose out for me all that I craved, and much thereafter I won by lot. So my house got increase speedily, and thus I waxed dread and honourable among the Cretans. But when Zeus, of the far-borne voice, devised at the last that hateful path which loosened the knees of many a man in death, then the people called on me and on renowned Idomeneus to lead the ships to Ilios, nor was there any way whereby to refuse, for the people's voice bore hard upon us. There we sons of the Achæans warred for nine whole years, and then in the tenth year we sacked the city of Priam, and departed homeward with our ships, and a god scattered the Achæans. But Zeus, the counsellor, devised mischief against me, wretched man that I was! For one month only I abode and had joy in my children and my wedded wife, and all that I had; and thereafter my spirit bade me fit out ships in the best manner and sail to Egypt with my godlike company. Nine ships I fitted out and the host was gathered quickly; and then for six days my dear company feasted, and I gave them many victims that they might sacrifice to the gods and prepare a feast for themselves. But on the

seventh day we set sail from wide Crete, with a North Wind fresh and fair, and lightly we ran as it were down stream, yea and no harm came to any ship of mine, but we sat safe and hale, while the wind and pilots guided the barques. And on the fifth day we came to the fair-flowing Ægyptus, and in the river Ægyptus I stayed my curved ships. Then verily I bade my dear companions to abide there by the ships and to guard them, and I sent forth scouts to range the points of outlook. But my men gave place to wantonness, being the fools of their own force, and soon they fell to wasting the fields of the Egyptians, exceeding fair, and led away their wives and infant children and slew the men. And the cry came quickly to the city, and the people hearing the shout came forth at the breaking of the day, and all the plain was filled with footmen and chariots and with the glitter of bronze. And Zeus, whose joy is in the thunder, sent an evil panic upon my company, and none durst stand and face the foe, for danger encompassed us on every side. There they slew many of us with the edge of the sword, and others they led up with them alive to work for them perforce. But as for me, Zeus himself put a thought into my heart; would to God that I had rather died, and met my fate there in Egypt, for sorrow was still mine host! Straightway I put off my well-wrought helmet from my head, and the shield from off my shoulders, and I cast away my spear from my hand, and I came over against the chariots of the king, and clasped and kissed his knees, and he saved me and delivered me, and setting me on his own chariot took me weeping to his home. Truly many an one made at me with their ashen spears, eager to slay me, for verily they were sore angered. But the king kept them off and had respect unto the wrath of Zeus, the god of strangers, who chiefly hath displeasure at evil deeds. So for seven whole years I abode with their king, and gathered much substance among the Egyptians, for they all gave me gifts. But when the eighth year came in due season, there arrived a Phœnician practised in deceit, a greedy knave, who had already done much mischief among men. He wrought on me with his cunning, and took me with him until he came to Phœnicia, where was his house and where his treasures lay. There I abode with him for the space of a full year. But when now the months and days were fulfilled, as the year came round and the seasons returned, he set me aboard a seafaring ship for Libya under colour as though I was to convey a cargo thither with him, but his purpose was to sell me in Libya, and get a great price. . . ."

Then made answer to him, swineherd Eumæus: "Ah! wretched guest, verily thou hast stirred my heart with the tale of all these things, of thy sufferings and thy wanderings. . . . But now it is supper-time, and would that my fellows may speedily be at home, that we may make ready a dainty supper within the hut."

Thus they spake one to the other. And lo, the swine and the swineherds drew nigh. And the swine they shut up to sleep in their lairs, and a mighty din arose as the swine were being stalled. Then the goodly swineherd called to his fellows, saying:

"Bring the best of the swine, that I may sacrifice it for a guest of mine from a far land: and we too will have good cheer therewith, for we have long suffered and toiled by reason of the white-tusked swine, while others devour the fruit of our labour without atonement." . . .

So he spake, and made burnt offering of the hallowed parts to the everlasting gods, and poured the dark wine for a drink offering, and set the cup in the hands of Odysseus, the waster of cities, and sat down by his own mess. And Mesaulius bare them wheaten bread, a thrall that the swineherd had gotten all alone, while his lord was away, without the knowledge of his mistress and the old Laertes: yea he had bought him of the Taphians with his own substance. So they stretched forth their hands upon the good cheer spread before them. Now after they had put from them the desire of meat and drink, Mesaulius cleared away the bread, and they, now that they had eaten enough of bread and flesh, were moved to go to rest.

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BOOK XV

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Pallas sends home Telemachus from Lacedæmon with the presents given him by Menelaus. Telemachus landed, goes first to Eumæus.

Now so soon as early Dawn shone forth, the rosy-fingered, they yoked the horses and mounted the inlaid car. And forth they drave from the gateway and the echoing gallery. And he touched the horses with the whip to start them, and the pair flew onward nothing loth. And soon thereafter they reached the steep hold of Pylos. Then Telemachus spake unto the son of Nestor, saying:

"Son of Nestor, in what wise mightest thou make me a promise and fulfil my bidding? For we claim to be friends by reason of our fathers' friendship from of old. Moreover we are equals in age,

and this journey shall turn to our greater love. Take me not hence past my ship, O fosterling of Zeus, but leave me there, lest that old man keep me in his house in my despite, out of his eager kindness, for I must go right quickly home."

So spake he, and the son of Nestor communed with his own heart how he might make promise, and duly fulfil the same. So as he thought thereon, in this wise it seemed to him best. He turned back his horses toward the swift ship and sea-banks, and took forth the fair gifts and set them in the hinder part of the ship, the raiment and the gold which Menelaus gave him. And he called to Telemachus and spake to him winged words:

"Now climb the ship with all haste, and bid all thy company do likewise, ere I reach home and bring the old man word. For well I know in my mind and heart that, being so wilful of heart, he will not let thee go, but he himself will come hither to bid thee to his house, and methinks that he will not go back without thee; for very wroth will he be despite thine excuse."

Thus he spake, and drave the horses with the flowing manes back to the town of the Pylians, and came quickly to the halls. And Telemachus called to his companions and commanded them, saying:

"Set ye the gear in order, my friends, in the black ship, and let us climb aboard that we may make way upon our course."

So spake he, and they gave good heed and hearkened. Then straightway they embarked and sat upon the benches.

Thus was he busy hereat and praying and making burnt-offering to Athene, by the stern of the ship, when there drew nigh him one from a far country, that had slain his man and was fleeing from out of Argos. He was a soothsayer, and by his lineage he came of Melampus, who of old time abode in Pylos, mother of flocks, a rich man and one that had an exceeding goodly house among the Pylians, but afterward he had come to the land of strangers, fleeing from his country and from Neleus, the great-hearted, the proudest of living men, who kept all his goods for a full year by force. All that time Melampus lay bound with hard bonds in the halls of Phylacus, suffering strong pains for the sake of the daughter of Neleus, and for the dread blindness of soul which the goddess, the Erinnys of the dolorous stroke, had laid on him. Howsoever he escaped his fate, and drave away the lowing kine from Phylace to Pylos, and avenged the foul deed upon godlike Neleus, and brought the maiden home to his own brother to wife. As for him, he went to a country of other men, to Argos, the pastureland of

horses; for there truly it was ordained that he should dwell, bearing rule over many of the Argives. There he wedded a wife, and builded him a lofty house, and begat Antiphates and Mantius, two mighty sons. Now Antiphates begat Oïcles, the great-hearted, and Oïcles Amphiaraus, the rouser of the host, whom Zeus, lord of the ægis, and Apollo loved with all manner of love. Yet he reached not the threshold of old age, but died in Thebes by reason of a woman's gifts. And the sons born to him were Alcmæon and Amphilochus. But Mantius begat Polypheides and Cleitus; but it came to pass that the golden-throned Dawn snatched away Cleitus for his very beauty's sake, that he might dwell with the Immortals.

And Apollo made the high-souled Polypheides a seer, far the chief of human kind, Amphiaraus being now dead. He removed his dwelling to Hypheresia, being angered with his father, and here he abode and prophesied to all men.

This man's son it was, Theoclymenus by name, that now drew nigh and stood by Telemachus. And he found him pouring a drink-offering and praying by the swift black ship, and uttering his voice he spake to him winged words:

"Friend, since I find thee making burnt-offering in this place, I pray thee, by thine offerings and by the god, and thereafter by thine own head, and in the name of the men of thy company answer my question truly and hide it not. Who art thou of the sons of men and whence? Where is thy city, where are they that begat thee?"

And wise Telemachus answered him, saying: "Yea, now, stranger, I will plainly tell thee all. Of Ithaca am I by lineage, and my father is Odysseus, if ever such an one there was, but now hath he perished by an evil fate. Wherefore I have taken my company and a black ship, and have gone forth to hear word of my father that has been long afar."

Then godlike Theoclymenus spake to him again: "Even so I too have fled from my country, for the manslaying of one of mine own kin. And many brethren and kinsmen of the slain are in Argos, the pastureland of horses, and rule mightily over the Achæans. Wherefore now am I an exile to shun death and black fate at their hands, for it is my doom yet to wander among men. Now set me on board ship, since I supplicate thee in my flight, lest they slay me utterly; for methinks they follow hard after me."

And wise Telemachus answered him, saying: "Surely I will not drive thee away from our good ship, if thou art fain to come.

Follow thou with us then, and in Ithaca thou shalt be welcome to such things as we have." . . .

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Now Odysseus and the goodly swineherd were supping in the hut, and the other men sat at meat with them. . . .

[Odysseus] ". . . But behold now, since thou stayest me here, and biddest me wait his coming, tell me of the mother of divine Odysseus, and of the father whom at his departure he left behind him on the threshold of old age; are they, it may be, yet alive beneath the sunlight, or already dead and within the house of Hades?"

Then spake to him the swineherd, a master of men: "Yea now, stranger, I will plainly tell thee all. Laertes yet lives, and prays evermore to Zeus that his life may waste from out his limbs within his halls. For he has wondrous sorrow for his son that is far away, and for the wedded lady his wise wife, whose death afflicted him in chief and brought him to old age before his day. Now she died of very grief for her son renowned, by an evil death, so may no man perish who dwells here and is a friend to me in word and deed! So long as she was on earth, though in much sorrow, I was glad to ask and enquire concerning her, for that she herself had reared me along with long-robed Ctimene, her noble daughter, the youngest of her children. With her I was reared, and she honoured me little less than her own. But when we both came to the flower of age, thereupon they sent her to Same, and got a great bride-price; but my lady clad me in a mantle and a doublet, raiment very fair, and gave me sandals for my feet and sent me forth to the field, and right dear at heart she held me. . . ."

And Odysseus of many counsels answered him saying: "Ah, Eumæus, how far then didst thou wander from thine own country and thy parents while as yet thou wast but a child! But come, declare me this and plainly tell it all. Was a wide-wayed town of men taken and sacked, wherein dwelt thy father and thy lady mother, or did unfriendly men find thee lonely, tending sheep or cattle, and shipped thee thence, and sold thee into the house of thy master here, who paid for thee a goodly price?"

Then spake to him the swineherd, a master of men: "Stranger, since thou askest and questionest me hereof, give heed now in silence and make merry, and abide here drinking wine. . . .

"There is a certain isle called Syria, if haply thou hast heard tell of it, over above Ortygia, and there are the turning-places of the

sun. It is not very great in compass, though a goodly isle, rich in herds, rich in flocks, with plenty of corn and wine. Dearth never enters the land, and no hateful sickness falls on wretched mortals. But when the tribes of men grow old in that city, then comes Apollo of the silver bow, with Artemis, and slays them with the visitation of his gentle shafts. In that isle are two cities, and the whole land is divided between them, and my father was king over the twain, Ctesius son of Ormenus, a man like to the Immortals.

"Thither came the Phœnicians, mariners renowned, greedy merchant men, with countless gauds in a black ship. Now in my father's house was a Phœnician woman, tall and fair and skilled in bright handiwork; this woman the Phœnicians with their sleights beguiled. . . . Then he asked her who she was and whence she came, and straightway she showed him the lofty home of my father, saying:

'From out of Sidon I avow that I come, a land rich in bronze, and I am the daughter of Arybas, the deeply wealthy. But Taphians, who were sea-robbers, laid hands on me and snatched me away as I came in from the fields, and brought me hither and sold me into the house of my master, who paid for me a goodly price.'

"Then the man answered: 'Say, wouldst thou now return home with us, that thou mayst look again on the lofty house of thy father and mother and on their faces? For truly they yet live, and have a name for wealth.'

"Then the woman answered him and spake, saying: 'Even this may well be, if ye sailors will pledge me an oath to bring me home in safety.'

"So spake she, and they all swore thereto as she bade them. Now when they had sworn and done that oath, again the woman spake among them and answered, saying:

'Hold your peace now, and let none of your fellows speak to me and greet me, if they meet me in the street, or even at the well, lest one go and tell it to the old man at home, and he suspect somewhat and bind me in hard bonds and devise death for all of you. But keep ye the matter in mind, and speed the purchase of your homeward freight. And when your ship is freighted with stores, let a message come quickly to me at the house; for I will likewise bring gold, all that comes under my hand. Yea and there is another thing that I would gladly give for my fare. I am nurse to the child of my lord in the halls, a most cunning little boy, that runs out and abroad with me. Him would I bring on board ship, and

he should fetch you a great price, wheresoever ye take him for sale among men of strange speech.'

"Therewith she went her way to the fair halls. But they abode among us a whole year, and got together much wealth in their hollow ship. And when their hollow ship was now laden to depart, they sent a messenger to tell the tidings to the woman. There came a man versed in craft to my father's house, with a golden chain strung here and there with amber beads. Now the maidens in the hall and my lady mother were handling the chain and gazing on it, and offering him their price; but he had signed silently to the woman, and therewithal gat him away to the hollow ship. Then she took me by the hand and led me forth from the house. And at the vestibule of the house she found the cups and the tables of the guests that had been feasting, who were in waiting on my father. They had gone forth to the session and the place of parley of the people. And she straightway hid three goblets in her bosom, and bare them away, and I followed in my innocence. Then the sun sank and all the ways were darkened. And we went quickly and came to the good haven, where was the swift ship of the Phœnicians. So they climbed on board and took us up with them, and sailed over the wet ways, and Zeus sent us a favouring wind. For six days we sailed by day and night continually; but when Zeus, son of Cronos, added the seventh day thereto, then Artemis, the archer, smote the woman that she fell, as a sea-swallow falls, with a plunge into the hold. And they cast her forth to be the prey of seals and fishes, but I was left stricken at heart. And wind and water bare them and brought them to Ithaca, where Laertes bought me with his possessions. And thus it chanced that mine eyes beheld this land." . . .

BOOK XVI

Telemachus sends Eumæus to the city to tell his mother of his return. And how, in the meantime, Odysseus discovers himself to his son.

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BOOK XVII

Telemachus relates to his mother what he had heard at Pylos and Sparta.

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BOOK XVIII

The fighting at fists of Odysseus with Irus. His admonitions to Amphinomus. Penelope appears before the wooers, and draws presents from them.

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Now Athene would in no wise suffer the lordly wooers to abstain from biting scorn, that the pain might sink yet the deeper into the heart of Odysseus, son of Laertes. . . .

He [Eurymachus, leader of the wooers] spake, and withal addressed Odysseus, waster of cities: "Stranger, wouldest thou indeed be my hireling, if I would take thee for my man, at an upland farm, and thy wages shall be assured thee, and there shalt thou gather stones for walls and plant tall trees? There would I provide thee bread continual, and clothe thee with raiment, and give thee shoes for thy feet. . . ."

BOOK XIX

Telemachus removes the arms out of the hall. Odysseus discourseth with Penelope, and is known by his nurse, but concealed. And the hunting of the boar upon that occasion related.

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BOOK XX

Pallas and Odysseus consult of the killing of the wooers.

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BOOK XXI

Penelope bringeth forth her husband's bow, which the suitors could not bend, but was bent by Odysseus.

. . . And she betook her, with her hand-maidens, to the treasure-chamber in the uttermost part of the house, where lay the treasures of her lord, bronze and gold and well-wrought iron. And there lay the back-bent bow and the quiver for the arrows, and many shafts were therein, winged for death, gifts of a friend of Odysseus, that met with him in Lacedæmon, Iphitus son of Eurytus, a man like to the gods. These twain fell in with one another in Messene, in the house of wise Ortilochus. Now Odysseus had gone thither to recover somewhat that was owing to him from all the people, for the men of Messene had lifted three hundred sheep in benched ships from out of Ithaca, with the shepherds of the flock. In quest of these it was that Odysseus went on a far embassy, being yet a lad; for his father and the other elders sent him forth. Moreover, Iphitus came thither in his search for twelve brood mares, which he had lost, with sturdy mules at the teat. These same it was that brought him death and destiny in the latter end, when he came to the child of Zeus, hardy of heart, the

man Heracles, that had knowledge of great adventures, who smote Iphitus though his guest in his house, in his frowardness, and had no regard for the vengeance of the gods, nor for the table which he spread before him; for after the meal he slew him, his guest though he was, and kept for himself in the halls, the horses strong of hoof. After these was Iphitus asking, when he met with Odysseus, and he gave him the bow, which of old great Eurytus bare and had left at his death to his son in his lofty house. And Odysseus gave Iphitus a sharp sword and a mighty spear, for the beginning of a loving friendship; but never had they acquaintance one of another at the board; ere that might be, the son of Zeus slew Iphitus son of Eurytus, a man like to the immortals, the same that gave Odysseus the bow. But goodly Odysseus would never take it with him on the black ships, as he went to the wars, but the bow was laid by at home in the halls as a memorial of a dear guest, and he carried it on his own land.

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But those other twain went forth both together from the house, the neatherd and the swineherd of godlike Odysseus; and Odysseus passed out after them. But when they were now gotten without the gates and the courtyard, he uttered his voice and spake to them in gentle words:

"Neatherd and thou swineherd, shall I say somewhat or keep it to myself? Nay, my spirit bids me declare it. What manner of men would ye be to help Odysseus, if he should come thus suddenly, I know not whence, and some god were to bring him? Would ye stand on the side of the wooers or of Odysseus? Tell me even as your heart and spirit bid you."

Then the neatherd answered him, saying: "Father Zeus, if but thou wouldst fulfil this wish: oh, that that man might come, and some god lead him hither! So shouldest thou know what my might is, and how my hands follow to obey."

In like manner Eumaeus prayed to all the gods that wise Odysseus might return to his own house.

Now when he knew for a surety what spirit they were of, once more he answered and spake to them, saying:

"Behold, home am I come, even I; after much travail and sore am I come in the twentieth year to mine own country. And I know how that my coming is desired by you alone of all my thralls, for from none besides have I heard a prayer that I might return once more to my home. And now I will tell you all the truth,

even as it shall come to pass. If the god shall subdue the proud wooers to my hands, I will bring you each one a wife, and will give you a heritage of your own and a house builded near to me, and ye twain shall be thereafter in mine eyes as the brethren and companions of Telemachus. But behold, I will likewise show you a most manifest token, that ye may know me well and be certified in heart, even the wound that the boar dealt me with his white tusk long ago, when I went to Parnassus with the sons of Autolycus." . . .

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. . . . But when they had poured forth and had drunken to their hearts' desire, Odysseus of many counsels spake among them out of a crafty heart, saying:

"Hear me, ye wooers of the renowned queen, that I may say that which my heart within me bids. . . . Come, therefore, give me the polished bow, that in your presence I may prove my hands and strength, whether I have yet any force such as once was in my supple limbs, or whether my wanderings and needy fare have even now destroyed it."

So spake he and they all were exceeding wroth, for fear lest he should string the polished bow. And Antinous rebuked him, and spake and hailed him:

"Wretched stranger, thou hast no wit, nay never so little. Art thou not content to feast at ease in our high company, and to lack not thy share of the banquet, but to listen to our speech and our discourse, while no guest and beggar beside thee hears our speech? . . ."

Then wise Penelope answered him: "Antinous, truly it is not fair nor just to rob the guests of Telemachus of their due, whosoever he may be that comes to this house. Dost thou think if yonder stranger strings the great bow of Odysseus, in the pride of his might and of his strength of arm, that he will lead me to his home and make me his wife?" . . .

Then wise Telemachus answered her, saying: "My mother, as for the bow, no Achæan is mightier than I to give or to deny it to whomso I will, neither as many as are lords in rocky Ithaca nor in the isles on the side of Elis, the pastureland of horses. Not one of these shall force me in mine own despite, if I choose to give this bow, yea once and for all, to the stranger to bear away with him. But do thou go to thine own chamber and mind thine own housewiferies, the loom and distaff, and bid thine handmaids ply

their tasks. But the bow shall be for men, for all, but for me in chief, for mine is the lordship in the house."

Then in amaze she went back to her chamber, for she laid up the wise saying of her son in her heart.

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BOOK XXII

The killing of the wooers.

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. . . Then Odysseus of many counsels looked fiercely on them, and spake: . . .

. . . And pale fear gat hold on the limbs of all, and each man looked about, where he might shun utter doom. And Eurymachus alone answered him, and spake: "If thou art indeed Odysseus of Ithaca, come home again, with right thou speakest thus, of all that the Achæans have wrought, many infatuate deeds in thy halls and many in the field. Howbeit, he now lies dead that is to blame for all, Antinous; for he brought all these things upon us, not as longing very greatly for the marriage nor needing it sore, but with another purpose, that Cronion has not fulfilled for him, namely, that he might himself be king over all the land of stablished Ithaca, and he was to have lain in wait for thy son and killed him. But now he is slain after his deserving, and do thou spare thy people, even thine own; and we will hereafter go about the township and yield thee amends for all that has been eaten and drunken in thy halls, each for himself bringing atonement of twenty oxen worth, and requiting thee in gold and bronze till thy heart is softened, but till then none may blame thee that thou art angry."

Then Odysseus of many counsels looked fiercely on him, and said: "Eurymachus, not even if ye gave me all your heritage, all that ye now have, and whatsoever else ye might in any wise add thereto, not even so would I henceforth hold my hands from slaying, ere the wooers had paid for all their transgressions. And now the choice lies before you, whether to fight in fair battle or to fly, if any may avoid death and the fates. But there be some, methinks, that shall not escape from utter doom." . . .

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Then Athene, daughter of Zeus, drew nigh them, like Mentor in fashion and in voice, and Odysseus was glad when he saw her and spake, saying:

"Mentor, ward from us hurt, and remember me thy dear companion, that befriended thee often, and thou art of like age with me."

So he spake, deeming the while that it was Athene, summoner of the host. But the wooers on the other side shouted in the halls, and first Agelaus son of Damastor rebuked Athene, saying:

"Mentor, let not the speech of Odysseus beguile thee to fight against the wooers, and to succour him. For methinks that on this wise we shall work our will. When we shall have slain these men, father and son, thereafter shalt thou perish with them, such deeds thou art set on doing in these halls; nay, with thine own head shalt thou pay the price. But when with the sword we shall have overcome your violence, we will mingle all thy possessions, all that thou hast at home or in the field, with the wealth of Odysseus, and we will not suffer thy sons nor thy daughters to dwell in the halls, nor thy good wife to gad about in the town of Ithaca."

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BOOK XXIII

Odysseus maketh himself known to Penelope, tells his adventures briefly and in the morning goes to Laertes and makes himself known to him.

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[Odysseus] ". . . Let us then advise us how all may be for the very best. For whoso has slain but one man in a land, even one that leaves not many behind him, to take up the feud for him, turns outlaw and leaves his kindred and his own country; but we have slain the very stay of the city, the men who were far the best of all the noble youths in Ithaca. So this I bid thee consider."

Then wise Telemachus answered him, saying: "Father, see thou to this, for they say that thy counsel is far the best among men, nor might any other of mortal men contend with thee. But right eagerly will we go with thee now, and I think we shall not lack prowess, so far as might is ours."

And Odysseus of many counsels answered him saying: "Yea now, I will tell on what wise methinks it is best. First, go ye to the bath and array you in your doublets, and bid the maidens in the chambers to take to them their garments. Then let the divine minstrel, with his loud lyre in hand, lead off for us the measure of the mirthful dance. So shall any man that hears the sound from without, whether a wayfarer or one of those that dwell around, say that it is a wedding feast. And thus the slaughter of the wooers shall not be noised abroad through the

town before we go forth to our well-wooded farm-land. Thereafter shall we consider what gainful counsel the Olympian may vouchsafe us."

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BOOK XXIV

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The Ithacans bury the wooers, and sitting in council resolve on revenge. And coming near the house of Laertes, are met by Odysseus, and Laertes with Telemachus and servants, the whole number twelve, and are overcome, and submit.

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Now when those others had gone down from the city, quickly they came to the rich and well-ordered farm-land of Laertes, that he had won for himself of old, as the prize of great toil in war. There was his house, and all about it ran the huts wherein the thralls were wont to eat and dwell and sleep, bondsmen that worked his will. And in the house there was an old Sicilian woman, who diligently cared for the old man, in the upland far from the city. There Odysseus spake to his thralls and to his son, saying:

"Do ye now get you within the well-builded house, and quickly sacrifice the best of the swine for the midday meal, but I will make trial of my father, whether he will know me again and be aware of me when he sees me, or know me not, so long have I been away."

Therewith he gave the thralls his weapons of war. Then they went speedily to the house, while Odysseus drew near to the fruitful vineyard to make trial of his father. Now he found not Dolius there, as he went down into the great garden, nor any of the thralls nor of their sons. It chanced that they had all gone to gather stones for a garden fence, and the old man at their head. So he found his father alone in the terraced vineyard, digging about a plant. . . . Now he was holding his head down and kept digging about the plant, while his renowned son stood by him and spake, saying: ". . . Whose thrall art thou, and whose garden dost thou tend? Tell me moreover truly, that I may surely know, if it be indeed to Ithaca that I am now come, as one yonder told me who met with me but now on the way hither. . . . Once did I kindly entreat a man in mine own dear country, who came to our home, and never yet has any mortal been dearer of all the strangers that have drawn to my house from afar. He declared him to be by lineage from out of Ithaca, and

said that his own father was Laertes son of Arceisius. So I led him to our halls and gave him good entertainment, with all loving-kindness, out of the plenty that was within. Such gifts too I gave him as are the due of guests; of well wrought gold I gave him seven talents, and a mixing bowl of flowered work, all of silver, and twelve cloaks of single fold, and as many coverlets, and as many goodly mantles and doublets to boot, and besides all these, four women skilled in all fair works and most comely, the women of his choice." . . .

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. . . Now Rumour the messenger went swiftly all about the city, telling the tale of the dire death and fate of the wooers. And the people heard it, and all at once gathered together from every side with sighing and groaning before the house of Odysseus. And each brought forth his dead from the halls, and buried them; but those that came out of other cities they placed on swift ships and sent with fisherfolk, each to be carried to his own home. As for them they all fared together to the assembly-place, in sorrow of heart. When they were all gathered and come together, Eupeithes arose and spake among them, for a comfortless grief lay heavy on his heart for his son Antinous, the first man that goodly Odysseus had slain. Weeping for him he made harangue and spake among them:

"Friends, a great deed truly hath this man devised against the Achæans. Some with his ships he led away, many men and noble, and his hollow ships hath he lost, and utterly lost of his company, and others again, and those far the best of the Cephallenians he hath slain on his coming home. Up now, before ever he gets him swiftly either to Pylos or to fair Elis, where the Epeians bear sway, let us go forth; else even hereafter shall we have shame of face for ever. For a scorn this is even for the ears of men unborn to hear, if we avenge not ourselves on the slayers of our sons and of our brethren. Life would no more be sweet to me, but rather would I die straightway and be with the departed. Up, let us be going, lest these fellows be beforehand with us and get them over the sea."

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Then the old man, the lord Halitherses, spake among them, the son of Mastor, for he saw before and after. Out of his good will he made harangue and spake among them, saying:

" . . . Let us not go forth against him, lest haply some may find a bane of their own bringing."

So he spake, but they leapt up with a great cry, the more part of them, while the rest abode there together; for his counsel was not to the mind of the more part, but they gave ear to Eupeithes, and swiftly thereafter they rushed for their armour. So when they had arrayed them in shining mail, they assembled together in front of the spacious town. And Eupeithes led them in his witlessness, for he thought to avenge the slaying of his son, yet himself was never to return, but then and there to meet his doom. . . .

Chapter III

PLUTARCH'S LIVES[1]

SECTION 1

Theseus

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Now, after the death of his father Ægeus, forming in his mind a great and wonderful design, he gathered together all the inhabitants of Attica into one town, and made them one people of one city, whereas before they lived dispersed, and were not easy to assemble upon any affair for the common interest. Nay, differences and even wars often occurred between them, which he by his persuasions appeased, going from township to township, and from tribe to tribe. And those of a more private and mean condition readily embracing such good advice, to those of greater power he promised a commonwealth without monarchy, a democracy, or people's government, in which he should only be continued as their commander in war and the protector of their laws, all things else being equally distributed among them; — and by this means brought a part of them over to his proposal. The rest, fearing his power, which was already grown very formidable, and knowing his courage and resolution, chose rather to be persuaded than forced into a compliance. He then dissolved all the distinct state-houses, council halls, and magistracies, and built one common state-house and council hall on the site of the present upper town, and gave the name of Athens to the whole state, ordaining a common feast and sacrifice, which he called Panathenæa, or the sacrifice of all the united Athenians. He instituted also another sacrifice called Metœcia, or Feast of Migration, which is yet celebrated on the sixteenth day of Hecatombæon. Then, as he had promised, he laid down his regal power and proceeded to order a commonwealth, entering upon this great work not without advice from the gods. . . .

[1] [Translated from the Greek by John Dryden and others. Plutarch was born at Chæronea, in Bœotia, about 46 A.D.]

Farther yet designing to enlarge his city, he invited all strangers to come and enjoy equal privileges with the natives, and it is said that the common form, *Come hither, all ye people*, was the words that Theseus proclaimed when he thus set up a commonwealth, in a manner, for all nations. Yet he did not suffer his state, by the promiscuous multitude that flowed in, to be turned into confusion and be left without any order or degree, but was the first that divided the Commonwealth into three distinct ranks, the noblemen, the husbandmen, and artificers. To the nobility he committed the care of religion, the choice of magistrates, the teaching and dispensing of the laws, and interpretation and direction in all sacred matters; the whole city being, as it were, reduced to an exact equality, the nobles excelling the rest in honor, the husbandmen in profit, and the artificers in number. And that Theseus was the first, who, as Aristotle says, out of an inclination to popular government, parted with the regal power, Homer also seems to testify, in his catalogue of the ships, where he gives the name of *People* to the Athenians only.

He also coined money, and stamped it with the image of an ox, either in memory of the Marathonian bull, or of Taurus, whom he vanquished, or else to put his people in mind to follow husbandry; and from this coin came the expression so frequent among the Greeks, of a thing being worth ten or a hundred oxen.

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SECTION 2

Romulus

Not long after the first foundation of the city, they [Romulus and Remus] opened a sanctuary of refuge for all fugitives, which they called the temple of the god Asylæus, where they received and protected all, delivering none back, neither the servant to his master, the debtor to his creditor, nor the murderer into the hands of the magistrate, saying it was a privileged place, and they could so maintain it by an order of the holy oracle; insomuch that the city grew presently very populous, for they say, it consisted at first of no more than a thousand houses.

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The city now being built, Romulus enlisted all that were of age to bear arms into military companies, each company consisting of three thousand footmen and three hundred horse. These companies were called legions, because they were the choicest and

most select of the people for fighting men. The rest of the multitude he called the people; an hundred of the most eminent he chose for counsellors; these he styled patricians, and their assembly the senate, which signifies a council of elders. The patricians, some say, were so called because they were the fathers of lawful children; others, because they could give a good account who their own fathers were, which not every one of the rabble that poured into the city at first could do; others, from patronage, their word for protection of inferiors, the origin of which they attribute to Patron, one of those that came over with Evander, who was a great protector and defender of the weak and needy. But perhaps the most probable judgment might be, that Romulus, esteeming it the duty of the chiefest and wealthiest men, with a fatherly care and concern to look after the meaner, and also encouraging the commonalty not to dread or be aggrieved at the honors of their superiors, but to love and respect them, and to think and call them their fathers, might from hence give them the name of patricians. For at this very time all foreigners give senators the style of lords; but the Romans, making use of a more honorable and less invidious name, call them Patres Conscripti; at first, indeed, simply Patres, but afterwards, more being added, Patres Conscripti. By this more imposing title he distinguished the senate from the populace; and in other ways also separated the nobles and the commons, — calling them patrons, and these their clients, — by which means he created wonderful love and amity betwixt them, productive of great justice in their dealings. For they were always their clients' counsellors in law cases, their advocates in courts of justice; in fine, their advisers and supporters in all affairs whatever. These again faithfully served their patrons, not only paying them all respect and deference, but also, in case of poverty, helping them to portion their daughters and pay off their debts; and for a patron to witness against his client, or a client against his patron, was what no law nor magistrate could enforce. In aftertimes, all other duties subsisting still between them, it was thought mean and dishonorable for the better sort to take money from their inferiors.

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He instituted also certain laws, one of which is somewhat severe which suffers not a wife to leave her husband, but grants a husband power to turn off his wife, either upon poisoning her children, or counterfeiting his keys, or for adultery; but if the husband upon

any other occasion put her away, he ordered one moiety of his estate to be given to the wife, the other to fall to the goddess Ceres; and whoever cast off his wife, to make an atonement by sacrifice to the gods of the dead. This, too, is observable as a singular thing in Romulus, that he appointed no punishment for real parricide, but called all murder so, thinking the one an accursed thing, but the other a thing impossible; and, for a long time, his judgment seemed to have been right; for in almost six hundred years together, nobody committed the like in Rome; and Lucius Hostius, after the wars of Hannibal, is recorded to have been the first parricide. Let thus much suffice concerning these matters.

In the fifth year of the reign of Tatius, some of his friends and kinsmen, meeting ambassadors coming from Laurentum to Rome, attempted on the road to take away their money by force, and, upon their resistance, killed them. So great a villany having been committed Romulus thought the malefactors ought at once to be punished, but Tatius shuffled off and deferred the execution of it; and this one thing was the beginning of open quarrel betwixt them; in all other respects they were very careful of their conduct, and administered affairs together with great unanimity. The relations of the slain, being debarred of lawful satisfaction by reason of Tatius, fell upon him as he was sacrificing with Romulus at Lavinium, and slew him; but escorted Romulus home, commending and extolling him for a just prince. Romulus took the body of Tatius, and buried it very splendidly in the Aventine Mount, near the place called Armilustrium, but altogether neglected revenging his murder. Some authors write, the city of Laurentum, fearing the consequences, delivered up the murderers of Tatius; but Romulus dismissed them, saying, one murder was requited with another. This gave occasion of talk and jealousy, as if he were well pleased at the removal of his copartner in the government. . . .

Soon after a plague broke out, causing sudden death without any previous sickness; it infected also the corn with unfruitfulness, and cattle with barrenness; there rained blood, too, in the city; so that, to their actual sufferings, fear of the wrath of the gods was added. But when the same mischiefs fell upon Laurentum, then everybody judged it was divine vengeance that fell upon both cities, for the neglect of executing justice upon the murder of Tatius and the ambassadors. But the murderers on both sides being delivered up and punished, the pestilence visibly

abated; and Romulus purified the cities with lustrations, which, they say, even now, are performed at the wood called Ferentina.

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SECTION 3

Lycurgus

There is so much uncertainty in the accounts which historians have left us of Lycurgus, the lawgiver of Sparta, that scarcely anything is asserted by one of them which is not called into question or contradicted by the rest. Their sentiments are quite different as to the family he came of, the voyages he undertook, the place and manner of his death, but most of all when they speak of the laws he made and the commonwealth which he founded.

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Amongst the many changes and alterations which Lycurgus made, the first and of greatest importance was the establishment of the senate, which having a power equal to the kings' in matters of great consequence, and, as Plato expresses it, allaying and qualifying the fiery genius of the royal office, gave steadiness and safety to the commonwealth. For the state, which before had no firm basis to stand upon, but leaned one while towards an absolute monarchy, when the kings had the upper hand, and another while towards a pure democracy, when the people had the better, found in this establishment of the senate a central weight, like ballast in a ship, which always kept things in a just equilibrium.

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After the creation of the thirty senators, his next task, and, indeed, the most hazardous he ever undertook, was the making a new division of their lands. For there was an extreme inequality amongst them, and their state was overloaded with a multitude of indigent and necessitous persons, while its whole wealth had centred upon a very few. To the end, therefore, that he might expel from the state arrogance and envy, luxury and crime, and those yet more inveterate diseases of want and superfluity, he obtained of them to renounce their properties, and to consent to a new division of the land, and that they should live all together on an equal footing; merit to be their only road to eminence, and the disgrace of evil, and credit of worthy acts, their one measure of difference between man and man.

Upon their consent to these proposals, proceeding at once to put them into execution, he divided the country of Laconia in general into thirty thousand equal shares, and the part attached to the city of Sparta into nine thousand; these he distributed among the Spartans, as he did the others to the country citizens. Some authors say that he made but six thousand lots for the citizens of Sparta, and that king Polydorus added three thousand more. Others say that Polydorus doubled the number Lycurgus had made, which, according to them, was but four thousand five hundred. A lot was so much as to yield, one year with another, about seventy bushels of grain for the master of the family, and twelve for his wife, with a suitable proportion of oil and wine. And this he thought sufficient to keep their bodies in good health and strength; superfluities they were better without. It is reported, that, as he returned from a journey shortly after the division of the lands, in harvest time, the ground being newly reaped, seeing the stacks all standing equal and alike, he smiled, and said to those about him, "Methinks all Laconia looks like one family estate just divided among a number of brothers."

Not contented with this, he resolved to make a division of their movables too, that there might be no odious distinction or inequality left amongst them; but finding that it would be very dangerous to go about it openly, he took another course, and defeated their avarice by the following stratagem: he commanded that all gold and silver coin should be called in, and that only a sort of money made of iron should be current, a great weight and quantity of which was very little worth; so that to lay up twenty or thirty pounds there was required a pretty large closet, and, to remove it, nothing less than a yoke of oxen. With the diffusion of this money, at once a number of vices were banished from Lacedæmon; for who would rob another of such a coin? Who would unjustly detain or take by force, or accept as a bribe, a thing which it was not easy to hide, nor a credit to have, nor indeed of any use to cut in pieces? For when it was just red hot, they quenched it in vinegar, and by that means spoilt it, and made it almost incapable of being worked.

In the next place, he declared an outlawry of all needless and superfluous arts; but here he might almost have spared his proclamation; for they of themselves would have gone after the gold and silver, the money which remained being not so proper payment for curious work; for, being of iron, it was scarcely portable, neither, if they should take the means to export it, would it pass

amongst the other Greeks, who ridiculed it. So there was now no more means of purchasing foreign goods and small wares; merchants sent no shiploads into Laconian ports; no rhetoric-master, no itinerant fortune-teller, no harlot-monger, or gold or silversmith, engraver, or jeweller, set foot in a country which had no money; so that luxury, deprived little by little of that which fed and fomented it, wasted to nothing and died away of itself. For the rich had no advantage here over the poor, as their wealth and abundance had no road to come abroad by but were shut up at home doing nothing. And in this way they became excellent artists in common, necessary things; bedsteads, chairs, and tables, and such like staple utensils in a family, were admirably well made there; their cup, particularly, was very much in fashion, and eagerly bought up by soldiers, as Critias reports; for its color was such as to prevent water, drunk upon necessity and disagreeable to look at, from being noticed; and the shape of it was such that the mud stuck to the sides, so that only the purer part came to the drinker's mouth. For this, also, they had to thank their lawgiver, who, by relieving the artisans of the trouble of making useless things, set them to show their skill in giving beauty to those of daily and indispensable use.

The third and most masterly stroke of this great lawgiver, by which he struck a yet more effectual blow against luxury and the desire of riches, was the ordinance he made, that they should all eat in common, of the same bread and same meat, and of kinds that were specified, and should not spend their lives at home, laid on costly couches at splendid tables, delivering themselves up into the hands of their tradesmen and cooks, to fatten them in corners, like greedy brutes, and to ruin not their minds only but their very bodies which, enfeebled by indulgence and excess, would stand in need of long sleep, warm bathing, freedom from work, and, in a word, of as much care and attendance as if they were continually sick. It was certainly an extraordinary thing to have brought about such a result as this, but a greater yet to have taken away from wealth, as Theophrastus observes, not merely the property of being coveted, but its very nature of being wealth. For the rich, being obliged to go to the same table with the poor, could not make use of or enjoy their abundance, nor so much as please their vanity by looking at or displaying it. So that the common proverb, that Plutus, the god of riches, is blind, was nowhere in all the world literally verified but in Sparta. There, indeed, he was not only blind, but like a picture, without

either life or motion. Nor were they allowed to take food at home first, and then attend the public tables, for every one had an eye upon those who did not eat and drink like the rest, and reproached them with being dainty and effeminate.

This last ordinance in particular exasperated the wealthier men. They collected in a body against Lycurgus, and from ill words came to throwing stones, so that at length he was forced to run out of the market-place, and make to sanctuary to save his life; by good-hap he outran all, excepting one Alcander, a young man otherwise not ill accomplished, but hasty and violent, who came up so close to him, that when he turned to see who was so near him, he struck him upon the face with his stick, and put out one of his eyes. Lycurgus, so far from being daunted and discouraged by this accident, stopped short and showed his disfigured face and eye beat out to his countrymen; they, dismayed and ashamed at the sight, delivered Alcander into his hands to be punished, and escorted him home, with expressions of great concern for his ill-usage. Lycurgus, having thanked them for their care of his person, dismissed them all, excepting only Alcander; and, taking him with him into his house, neither did nor said anything severely to him, but, dismissing those whose place it was, bade Alcander to wait upon him at table. The young man, who was of an ingenuous temper, without murmuring did as he was commanded; and being thus admitted to live with Lycurgus, he had an opportunity to observe in him, besides his gentleness and calmness of temper, an extraordinary sobriety and an indefatigable industry, and so, from an enemy, became one of his most zealous admirers, and told his friends and relations that Lycurgus was not that morose and ill-natured man they had formerly taken him for, but the one mild and gentle character of the world. And thus did Lycurgus, for chastisement of his fault, make of a wild and passionate young man one of the discreetest citizens of Sparta.

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But to return to their public repasts; — these had several names in Greek; the Cretans called them *andria*, because the men only came to them. The Lacedæmonians called them *phiditia*, that is, by changing *l* into *d*, the same as *philitia*, love feasts, because that, by eating and drinking together, they had opportunity of making friends. Or perhaps from *phido*, parsimony, because they were so many schools of sobriety; or perhaps the first letter is an addition, and the word at first was *editia*, from

edode, eating. They met by companies of fifteen, more or less, and each of them stood bound to bring in monthly a bushel of meal, eight gallons of wine, five pounds of cheese, two pounds and a half of figs, and some very small sum of money to buy flesh or fish with. Besides this, when any of them made sacrifice to the gods, they always sent a dole to the common hall; and, likewise, when any of them had been a hunting, he sent thither a part of the venison he had killed; for these two occasions were the only excuses allowed for supping at home. The custom of eating together was observed strictly for a great while afterwards; insomuch that king Agis himself, after having vanquished the Athenians, sending for his commons at his return home, because he desired to eat privately with his queen, was refused them by the polemarchs; which refusal when he resented so much as to omit next day the sacrifice due for a war happily ended, they made him pay a fine.

They used to send their children to these tables as to schools of temperance; here they were instructed in state affairs by listening to experienced statesmen; here they learned to converse with pleasantry, to make jests without scurrility and take them without ill humor. In this point of good breeding, the Lacedæmonians excelled particularly, but if any man were uneasy under it, upon the least hint given, there was no more to be said to him. It was customary also for the eldest man in the company to say to each of them, as they came in, "Through this" (pointing to the door), "no words go out." When any one had a desire to be admitted into any of these little societies, he was to go through the following probation: each man in the company took a little ball of soft bread, which they were to throw into a deep basin, which a waiter carried round upon his head; those that liked the person to be chosen dropped their ball into the basin without altering its figure, and those who disliked him pressed it betwixt their fingers, and made it flat; and this signified as much as a negative voice. And if there were but one of these flattened pieces in the basin, the suitor was rejected, so desirous were they that all the members of the company should be agreeable to each other. The basin was called *caddichus*, and the rejected candidate had a name thence derived.

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Lycurgus would never reduce his laws into writing; nay there is a Rhetra expressly to forbid it. For he thought that the most

material points, and such as most directly tended to the public welfare, being imprinted on the hearts of their youth by a good discipline, would be sure to remain, and would find a stronger security, than any compulsion would be, in the principles of action formed in them by their best lawgiver, education. And as for things of lesser importance, as pecuniary contracts, and such like, the forms of which have to be changed as occasion requires, he thought it the best way to prescribe no positive rule or inviolable usage in such cases, willing that their manner and form should be altered according to the circumstances of time, and determinations of men of sound judgment. Every end and object of law and enactment it was his design education should effect.

One, then, of the Rhetras was, that their laws should not be written; another is particularly levelled against luxury and expensiveness, for by it it was ordained that the ceilings of their houses should only be wrought by the axe, and their gates and doors smoothed only by the saw. Epaminondas's famous dictum about his own table, that "Treason and a dinner like this do not keep company together," may be said to have been anticipated by Lycurgus. Luxury and a house of this kind could not well be companions. For a man must have a less than ordinary share of sense that would furnish such plain and common rooms with silver-footed couches and purple coverlets and gold and silver plate. Doubtless he had good reason to think that they would proportion their beds to their houses, and their coverlets to their beds, and the rest of their goods and furniture to these. It is reported that king Leotychides, the first of that name, was so little used to the sight of any other kind of work, that, being entertained at Corinth in a stately room, he was much surprised to see the timber and ceiling so finely carved and panelled, and asked his host whether the trees grew so in his country.

A third ordinance or Rhetra was, that they should not make war often, or long, with the same enemy, lest that they should train and instruct them in war, by habituating them to defend themselves. And this is what Agesilaus was much blamed for, a long time after; it being thought, that, by his continual incursions into Bœotia, he made the Thebans a match for the Lacedæmonians; and therefore Antalcidas, seeing him wounded one day, said to him, that he was very well paid for taking such pains to make the Thebans good soldiers, whether they would or no. These laws were called the Rhetras, to intimate that they were divine sanctions and revelations.

In order to the good education of their youth (which, as I said before, he thought the most important and noblest work of a lawgiver), he went so far back as to take into consideration their very conception and birth, by regulating their marriages. For Aristotle is wrong in saying, that, after he had tried all ways to reduce the women to more modesty and sobriety, he was at last forced to leave them as they were, because that in the absence of their husbands, who spent the best part of their lives in the wars, their wives, whom they were obliged to leave absolute mistresses at home, took great liberties and assumed the superiority; and were treated with overmuch respect and called by the title of lady or queen. The truth is, he took in their case, also, all the care that was possible; he ordered the maidens to exercise themselves with wrestling, running, throwing the quoit, and casting the dart, to the end that the fruit they conceived might, in strong and healthy bodies, take firmer root and find better growth, and withal that they, with this greater vigor, might be the more able to undergo the pains of child-bearing.

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In their marriages, the husband carried off his bride by a sort of force; nor were their brides ever small and of tender years.

. . . After guarding marriage with this modesty and reserve, he was equally careful to banish empty and womanish jealousy. For this object, excluding all licentious disorders, he made it, nevertheless, honorable for men to give the use of their wives to those whom they should think fit, that so they might have children by them; ridiculing those in whose opinion such favors are so unfit for participation as to fight and shed blood and go to war about it. Lycurgus allowed a man who was advanced in years and had a young wife to recommend some virtuous and approved young man, that she might have a child by him, who might inherit the good qualities of the father, and be a son to himself. . . .

These regulations, founded on natural and social grounds, were certainly so far from that scandalous liberty which was afterwards charged upon their women, that they knew not what adultery meant. It is told, for instance, of Geradas, a very ancient Spartan, that, being asked by a stranger what punishment their law had appointed for adulterers, he answered, "There are no adulterers in our country." "But," replied the stranger, "suppose there were?" "Then," answered he, "the offender

would have to give the plaintiff a bull with a neck so long as that he might drink from the top of Taygetus of the Eurotas river below it." The man, surprised at this, said, "Why, 'tis impossible to find such a bull." Geradas smilingly replied, "'Tis as possible as to find an adulterer in Sparta." So much I had to say of their marriages.

Nor was it in the power of the father to dispose of the child as he thought fit; he was obliged to carry it before certain triers at a place called Lesche; these were some of the elders of the tribe to which the child belonged; their business it was carefully to view the infant, and, if they found it stout and well made, they gave order for its rearing, and allotted to it one of the nine thousand shares of land above mentioned for its maintenance, but, if they found it puny and ill-shaped, ordered it to be taken to what was called the Apothetæ, a sort of chasm under Taygetus; as thinking it neither for the good of the child itself, nor for the public interest, that it should be brought up, if it did not, from the very outset, appear made to be healthy and vigorous. Upon the same account, the women did not bathe the new-born children with water, as is the custom in all other countries, but with wine, to prove the temper and complexion of their bodies; from a notion they had that epileptic and weakly children faint and waste away upon their being thus bathed, while, on the contrary, those of a strong and vigorous habit acquire firmness and get a temper by it, like steel. There was much care and art, too, used by the nurses; they had no swaddling bands; the children grew up free and unconstrained in limb and form, and not dainty and fanciful about their food; not afraid in the dark, or of being left alone; and without peevishness, or ill-humor, or crying. Upon this account, Spartan nurses were often bought up, or hired by people of other countries; and it is recorded that she who suckled Alcibiades was a Spartan; who, however, if fortunate in his nurse, was not so in his preceptor; his guardian, Pericles, as Plato tells us, chose a servant for that office called Zopyrus, no better than any common slave.

Lycurgus was of another mind; he would not have masters bought out of the market for his young Spartans, nor such as should sell their pains; nor was it lawful, indeed, for the father himself to breed up the children after his own fancy; but as soon as they were seven years old they were to be enrolled in certain companies and classes, where they all lived under the same order and discipline, doing their exercises and taking their play together.

Of these, he who showed the most conduct and courage was made captain; they had their eyes always upon him, obeyed his orders, and underwent patiently whatsoever punishment he inflicted; so that the whole course of their education was one continued exercise of a ready and perfect obedience. The old men, too, were spectators of their performances, and often raised quarrels and disputes among them, to have a good opportunity of finding out their different characters, and of seeing which would be valiant, which a coward, when they should come to more dangerous encounters. Reading and writing they gave them, just enough to serve their turn; their chief care was to make them good subjects, and to teach them to endure pain and conquer in battle. To this end, as they grew in years, their discipline was proportionately increased; their heads were close-clipped, they were accustomed to go barefoot, and for the most part to play naked.

After they were twelve years old, they were no longer allowed to wear any undergarment; they had one coat to serve them a year; their bodies were hard and dry, with but little acquaintance of baths and unguents; these human indulgences they were allowed only on some few particular days in the year. They lodged together in little bands upon beds made of the rushes which grew by the banks of the river Eurotas, which they were to break off with their hands without a knife; if it were winter, they mingled some thistle-down with their rushes, which it was thought had the property of giving warmth. By the time they were come to this age there was not any of the more hopeful boys who had not a lover to bear him company. The old men, too, had an eye upon them, coming often to the grounds to hear and see them contend either in wit or strength with one another, and this as seriously and with as much concern as if they were their fathers, their tutors, or their magistrates; so that there scarcely was any time or place without some one present to put them in mind of their duty, and punish them if they had neglected it.

Besides all this, there was always one of the best and honestest men in the city appointed to undertake the charge and governance of them; he again arranged them into their several bands, and set over each of them for their captain the most temperate and boldest of those they called Irens, who were usually twenty years old, two years out of the boys; and the oldest of the boys, again, were Mell-Irens, as much as to say, who would shortly be men. This young man, therefore, was their captain when they fought and their master at home, using them for the offices of his

house; sending the eldest of them to fetch wood, and the weaker and less able to gather salads and herbs, and these they must either go without or steal; which they did by creeping into the gardens, or conveying themselves cunningly and closely into the eating-houses; if they were taken in the fact, they were whipped without mercy, for thieving so ill and awkwardly. They stole, too, all other meat they could lay their hands on, looking out and watching all opportunities, when people were asleep or more careless than usual. If they were caught, they were not only punished with whipping, but hunger, too, being reduced to their ordinary allowance, which was but very slender, and so contrived on purpose, that they might set about to help themselves, and be forced to exercise their energy and address. This was the principal design of their hard fare; there was another not inconsiderable, that they might grow taller; for the vital spirits, not being overburdened and oppressed by too great a quantity of nourishment, which necessarily discharges itself into thickness and breadth, do by their natural lightness, rise; and the body, giving and yielding because it is pliant, grows in height. . . .

To return from whence we have digressed. So seriously did the Lacedæmonian children go about their stealing, that a youth, having stolen a young fox and hid it under his coat, suffered it to tear out his very bowels with its teeth and claws and died upon the place, rather than let it be seen. What is practised to this very day in Lacedæmon is enough to gain credit to this story, for I myself have seen several of the youths endure whipping to death at the foot of the altar of Diana surnamed Orthia.

The Iren, or under-master, used to stay a little with them after supper, and one of them he bade to sing a song, to another he put a question which required an advised and deliberate answer; for example, Who was the best man in the city? What he thought of such an action of such a man? They used them thus early to pass a right judgment upon persons and things, and to inform themselves of the abilities or defects of their countrymen. If they had not an answer ready to the question, Who was a good or who an ill-reputed citizen, they were looked upon as of a dull and careless disposition, and to have little or no sense of virtue and honor; besides this, they were to give a good reason for what they said, and in as few words and as comprehensive as might be; he that failed of this, or answered not to the purpose, had his thumb bit by the master. Sometimes the Iren did this in the presence of the old men and magistrates, that they might see

whether he punished them justly and in due measure or not, and when he did amiss, they would not reprove him before the boys, but, when they were gone, he was called to an account and underwent correction, if he had run far into either of the extremes of indulgence or severity.

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Their discipline continued still after they were full-grown men. No one was allowed to live after his own fancy; but the city was a sort of camp, in which every man had his share of provisions and business set out, and looked upon himself not so much born to serve his own ends as the interest of his country. Therefore if they were commanded nothing else, they went to see the boys perform their exercises, to teach them something useful or to learn it themselves of those who knew better. And indeed one of the greatest and highest blessings Lycurgus procured his people was the abundance of leisure which proceeded from his forbidding to them the exercise of any mean and mechanical trade. Of the money making that depends on troublesome going about and seeing people and doing business, they had no need at all in a state where wealth obtained no honor or respect. The Helots tilled their ground for them, and paid them yearly in kind the appointed quantity, without any trouble of theirs. To this purpose there goes a story of a Lacedæmonian who, happening to be at Athens when the courts were sitting, was told of a citizen that had been fined for living an idle life, and was being escorted home in much distress of mind by his condoling friends; the Lacedæmonian was much surprised at it and desired his friend to show him the man who was condemned for living like a freeman. So much beneath them did they esteem the frivolous devotion of time and attention to the mechanical arts and to money making.

It need not be said that upon the prohibition of gold and silver, all lawsuits immediately ceased, for there was now neither avarice nor poverty amongst them, but equality, where every one's wants were supplied, and independence, because those wants were so small. . . .

The senate, as I said before, consisted of those who were Lycurgus's chief aiders and assistants in his plans. The vacancies he ordered to be supplied out of the best and most deserving men past sixty years old, and we need not wonder if there was much striving for it; for what more glorious competition could there be amongst men, than one in which it was not contested who was

swiftest among the swift or strongest of the strong, but who of many wise and good was wisest and best, and fittest to be intrusted forever after, as the reward of his merits, with the supreme authority of the commonwealth, and with power over the lives, franchises, and highest interests of all his countrymen? The manner of their election was as follows: The people being called together, some selected persons were locked up in a room near the place of election, so contrived that they could neither see nor be seen, but could only hear the noise of the assembly without; for they decided this, as most other affairs of moment, by the shouts of the people. This done, the competitors were not brought in and presented all together, but one after another by lot, and passed in order through the assembly without speaking a word. Those who were locked up had writing tables with them, in which they recorded and marked each shout by its loudness, without knowing in favor of which candidate each of them was made, but merely that they came first, second, third, and so forth. He who was found to have the most and loudest acclamations was declared senator duly elected.

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SECTION 4

Numa Pompilius

Though the pedigrees of noble families of Rome go back in exact form as far as Numa Pompilius, yet there is great diversity amongst historians concerning the time in which he reigned; a certain writer called Clodius, in a book of his entitled Strictures on Chronology, avers that the ancient registers of Rome were lost when the city was sacked by the Gauls, and that those which are now extant were counterfeited, to flatter and serve the humor of some men who wished to have themselves derived from some ancient and noble lineage, though in reality with no claim to it. . . .

It was the thirty-seventh year, counted from the foundation of Rome, when Romulus, then reigning, did, on the fifth day of the month of July, called the Caprotine Nones, offer a public sacrifice at the Goat's Marsh, in presence of the senate and people of Rome. Suddenly the sky was darkened, a thick cloud of storm and rain settled on the earth; the common people fled in affright, and were dispersed; and in this whirlwind Romulus dis-

appeared, his body being never found either living or dead. A foul suspicion presently attached to the patricians, and rumors were current among the people as if that they, weary of kingly government, and exasperated of late by the imperious deportment of Romulus towards them had plotted against his life and made him away, that so they might assume the authority and government into their own hands. . . .

This trouble, being appeased, was followed by another, about the election of a new king; for the minds of the original Romans and the new inhabitants were not as yet grown into that perfect unity of temper, but that there were diversities of factions amongst the commonalty, and jealousies and emulations amongst the senators; for though all agreed that it was necessary to have a king, yet what person or of which nation was matter of dispute. . . .

Thus did both parties argue and dispute their cause; but lest meanwhile discord, in the absence of all command, should occasion general confusion, it was agreed that the hundred and fifty senators should interchangeably execute the office of supreme magistrate, and each in succession, with the ensigns of royalty, should offer the solemn sacrifices and despatch public business for the space of six hours by day and six by night; which vicissitude and equal distribution of power would preclude all rivalry amongst the senators and envy from the people, when they should behold one, elevated to the degree of a king, levelled within the space of a day to the condition of a private citizen. This form of government is termed, by the Romans, interregnum. Nor yet could they, by this plausible and modest way of rule, escape suspicion and clamor of the vulgar, as though they were changing the form of government to an oligarchy, and designing to keep the supreme power in a sort of wardship under themselves, without ever proceeding to choose a king. Both parties came at length to the conclusion that the one should choose a king out of the body of the other; the Romans make choice of a Sabine, or the Sabines name a Roman; this was esteemed the best expedient to put an end to all party spirit, and the prince who should be chosen would have an equal affection to the one party as his electors and to the other as his kinsmen. The Sabines remitted the choice to the original Romans, and they, too, on their part, were more inclinable to receive a Sabine king elected by themselves than to see a Roman exalted by the Sabines. Consultations being accordingly held, they named Numa Pompilius, of the Sabine race, a person of that high reputation for excellence,

that, though he were not actually residing at Rome, yet he was no sooner nominated than accepted by the Sabines, with acclamation almost greater than that of the electors themselves.

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The original constitution of the priests, called Pontifices, is ascribed unto Numa, and he himself was, it is said, the first of them; and that they have the name of Pontifices from *potens*, powerful, because they attend the service of the gods, who have power and command over all. . . .

The office of Pontifex Maximus, or chief priest, was to declare and interpret the divine law, or, rather, to preside over sacred rites; he not only prescribed rules for public ceremony, but regulated the sacrifices of private persons, not suffering them to vary from established custom, and giving information to every one of what was requisite for purposes of worship or supplication. He was also guardian of the vestal virgins, the institution of whom, and of their perpetual fire, was attributed to Numa, who, perhaps, fancied the charge of pure and uncorrupted flames would be fitly intrusted to chaste and unpolluted persons, or that fire, which consumes, but produces nothing, bears an analogy to the virgin estate. . . .

The statutes prescribed by Numa for the vestals were these: that they should take a vow of virginity for the space of thirty years, the first ten of which they were to spend in learning their duties, the second ten in performing them, and the remaining ten in teaching and instructing others. Thus the whole term being completed, it was lawful for them to marry, and, leaving the sacred order, to choose any condition of life that pleased them. . . .

For this condition he compensated by great privileges and prerogatives; as that they had power to make a will in the lifetime of their father; that they had a free administration of their own affairs without guardian or tutor, which was the privilege of women who were the mothers of three children; when they go abroad, they have the fasces carried before them; and if in their walks they chance to meet a criminal on his way to execution, it saves his life, upon oath made that the meeting was an accidental one, and not concerted or of set purpose.

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There was yet a farther use of the priests, and that was to give people directions in the national usages at funeral rites. Numa

taught them to regard these offices, not as a pollution, but as a duty paid to the gods below, into whose hands the better part of us is transmitted. . . .

Numa also prescribed rules for regulating the days of mourning, according to certain times and ages. As, for example, a child of three years was not to be mourned for at all; one older, up to ten years, for as many months as it was years old; and the longest time of mourning for any person whatsoever was not to exceed the term of ten months; which was the time appointed for women that lost their husbands to continue in widowhood. If any married again before that time, by the laws of Numa she was to sacrifice a cow big with calf.

Numa, also, was founder of several other orders of priests, two of which I shall mention, the Salii and the Feciales, which are among the clearest proofs of the devoutness and sanctity of his character. These Fecials, or guardians of peace, seem to have had their name from their office, which was to put a stop to disputes by conference and speech; for it was not allowable to take up arms until they had declared all hopes of accommodation to be at an end, for in Greek, too, we call it peace when disputes are settled by words, and not by force. The Romans commonly despatched the Fecials, or heralds, to those who had offered them injury, requesting satisfaction; and, in case they refused, they then called the gods to witness, and, with imprecations upon themselves and their country should they be acting unjustly, so declared war; against their will, or without their consent, it was lawful neither for soldier nor king to take up arms; the war was begun with them, and when they had first handed it over to the commander as a just quarrel, then his business was to deliberate of the manner and ways to carry it on.

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It was he, also, that built the temples of Faith and Terminus, and taught the Romans that the name of Faith was the most solemn oath that they could swear. They still use it; and to the god Terminus, or Boundary, they offer to this day both public and private sacrifices, upon the borders and stone-marks of their land; living victims now, though anciently those sacrifices were solemnized without blood; for Numa reasoned that the god of boundaries, who watched over peace, and testified to fair dealing, should have no concern with blood. It is very clear that it was this king who first prescribed bounds to the territory of Rome;

for Romulus would but have openly betrayed how much he had encroached on his neighbors' lands, had he ever set limits to his own; for boundaries are, indeed, a defence to those who choose to observe them, but are only a testimony against the dishonesty of those who break through them. The truth is, the portion of lands which the Romans possessed at the beginning was very narrow, until Romulus enlarged them by war; all those acquisitions Numa now divided amongst the indigent commonalty, wishing to do away with that extreme want which is a compulsion to dishonesty, and, by turning the people to husbandry, to bring them, as well as their lands, into better order. For there is no employment that gives so keen and quick a relish for peace as husbandry and a country life, which leave in men all that kind of courage that makes them ready to fight in defence of their own, while it destroys the license that breaks out into acts of injustice and rapacity. Numa, therefore, hoping agriculture would be a sort of charm to captivate the affections of his people to peace, and viewing it rather as a means to moral than to economical profit, divided all the lands into several parcels, to which he gave the name of *pagus*, or parish, and over every one of them he ordained chief overseers; and, taking a delight sometimes to inspect his colonies in person, he formed his judgment of every man's habits by the results; of which being witness himself, he preferred those to honors and employments who had done well, and by rebukes and reproaches incited the indolent and careless to improvement. But of all his measures the most commended was his distribution of the people by their trades into companies or guilds; for as the city consisted, or rather did not consist of, but was divided into two different tribes, the diversity between which could not be effaced and in the mean time prevented all unity and caused perpetual tumult and ill-blood, reflecting how hard substances that do not readily mix when in the lump may, by being beaten into powder, in that minute form be combined, he resolved to divide the whole population into a number of small divisions, and thus hoped, by introducing other distinctions, to obliterate the original and great distinction, which would be lost among the smaller. So, distinguishing the whole people by the several arts and trades, he formed the companies of musicians, goldsmiths, carpenters, dyers, shoemakers, skinners, braziers, and potters; and all other handicraftsmen he composed and reduced into a single company, appointing every one their proper courts, councils, and religious observances. In this manner all factious

distinctions began, for the first time, to pass out of use, no person any longer being either thought of or spoken of under the notion of a Sabine or a Roman, a Romulian or a Tatian; and the new division became a source of general harmony and intermixture.

He is also much to be commended for the repeal, or rather amendment, of that law which gives power to fathers to sell their children; he exempted such as were married, conditionally that it had been with the liking and consent of their parents; for it seemed a hard thing that a woman who had given herself in marriage to a man whom she judged free should afterwards find herself living with a slave.

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SECTION 5

Solon

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The Athenians, now the Cylonian sedition was over and the polluted gone into banishment, fell into their old quarrels about government, there being as many different parties as there were diversities in the country. The Hill quarter favored democracy, the Plain, oligarchy, and those that lived by the Seaside stood for a mixed sort of government, and so hindered either of the other parties from prevailing. And the disparity of fortune between the rich and the poor, at that time, also reached its height; so that the city seemed to be in a truly dangerous condition, and no other means for freeing it from disturbances and settling it to be possible but a despotic power. All the people were indebted to the rich; and either they tilled their land for their creditors, paying them a sixth part of the increase, and were, therefore, called Hectemorii and Thetes, or else they engaged their body for the debt, and might be seized, and either sent into slavery at home, or sold to strangers; some (for no law forbade it) were forced to sell their children, or fly their country to avoid the cruelty of their creditors; but the most part and the bravest of them began to combine together and encourage one another to stand to it, to choose a leader, to liberate the condemned debtors, divide the land, and change the government.

Then the wisest of the Athenians, perceiving Solon was of all men the only one not implicated in the troubles, that he had not joined in the exactions of the rich, and was not involved in the

necessities of the poor, pressed him to succor the commonwealth and compose the differences. Though Phanias the Lesbian affirms, that Solon, to save his country, put a trick upon both parties, and privately promised the poor a division of the lands, and the rich security for their debts. Solon, however, himself says, that it was reluctantly at first that he engaged in state affairs, being afraid of the pride of one party and the greediness of the other; he was chosen archon, however, after Philombrotus, and empowered to be an arbitrator and lawgiver; the rich consenting because he was wealthy, the poor because he was honest. . . .

And, therefore, when he was afterwards asked if he had left the Athenians the best laws that could be given, he replied, "The best they could receive. . . ." For the first thing which he settled was, that what debts remained should be forgiven, and no man, for the future, should engage the body of his debtor for security. Though some, as Androtion, affirm that the debts were not cancelled, but the interest only lessened, which sufficiently pleased the people; so that they named this benefit the Seisacthea, together with the enlarging their measures, and raising the value of their money; for he made a pound, which before passed for seventy-three drachmas, go for a hundred; so that, though the number of pieces in the payment was equal, the value was less; which proved a considerable benefit to those that were to discharge great debts, and no loss to the creditors. But most agree that it was the taking off the debts that was called Seisacthea, which is confirmed by some places in his poem, where he takes honor to himself, that

> The mortgage-stones that covered her, by me
> Removed, — the land that was a slave is free:

that some who had been seized for their debts he had brought back from other countries, where

> — so far their lot to roam,
> They had forgot the language of their home;

and some he had set at liberty,

> Who here in shameful servitude were held.

While he was designing this, a most vexatious thing happened; for when he had resolved to take off the debts, and was considering the proper form and fit beginning for it, he told some of his friends, Conon, Clinias, and Hipponicus, in whom he had a great deal of confidence, that he would not meddle with the lands, but

only free the people from their debts; upon which they, using their advantage, made haste and borrowed some considerable sums of money, and purchased some large farms; and when the law was enacted, they kept the possessions, and would not return the money; which brought Solon into great suspicion and dislike, as if he himself had not been abused, but was concerned in the contrivance. But he presently stopped this suspicion, by releasing his debtors of five talents (for he had lent so much), according to the law; others, as Polyzelus the Rhodian, say fifteen; his friends, however, were ever afterward called Chreocopidæ, repudiators.

In this he pleased neither party, for the rich were angry for their money, and the poor that the land was not divided, and, as Lycurgus ordered in his commonwealth, all men reduced to equality. . . .

Soon, however, becoming sensible of the good that was done, they laid by their grudges, made a public sacrifice, calling it Seisacthea, and chose Solon to new-model and make laws for the commonwealth, giving him the entire power over everything, their magistracies, their assemblies, courts, and councils; that he should appoint the number, times of meeting, and what estate they must have that could be capable of these, and dissolve or continue any of the present constitutions, according to his pleasure.

First, then, he repealed all Draco's laws, except those concerning homicide, because they were too severe, and the punishments too great; for death was appointed for almost all offences, insomuch that those that were convicted of idleness were to die, and those that stole a cabbage or an apple to suffer even as villains that committed sacrilege or murder. So that Demades, in after time, was thought to have said very happily, that Draco's laws were written not with ink but blood; and he himself, being once asked why he made death the punishment of most offences, replied, "Small ones deserve that, and I have no higher for the greater crimes."

Next, Solon, being willing to continue the magistracies in the hands of the rich men, and yet receive the people into the other part of the government, took an account of the citizens' estates, and those that were worth five hundred measures of fruit, dry and liquid, he placed in the first rank, calling them Pentacosiomedimni; those that could keep an horse, or were worth three hundred measures, were named Hippada Teluntes, and made the second class; the Zeugitæ, that had two hundred measures, were in the third; and all the others were called Thetes, who were not ad-

mitted to any office, but could come to the assembly, and act as jurors; which at first seemed nothing, but afterwards was found an enormous privilege, as almost every matter of dispute came before them in this latter capacity. Even in the cases which he assigned to the archon's cognizance, he allowed an appeal to the courts. Besides, it is said that he was obscure and ambiguous in the wording of his laws, on purpose to increase the honor of his courts; for since their differences could not be adjusted by the letter, they would have to bring all their causes to the judges, who thus were in a manner masters of the laws. And for the greater security of the weak commons, he gave general liberty of indicting for an act of injury; if any one was beaten, maimed, or suffered any violence, any man that would and was able might prosecute the wrong-doer; intending by this to accustom the citizens, like members of the same body, to resent and be sensible of one another's injuries. And there is a saying of his agreeable to his law, for, being asked what city was best modelled, "That," said he, "where those that are not injured try and punish the unjust as much as those that are."

When he had constituted the Areopagus of those who had been yearly archons, of which he himself was a member therefore, observing that the people, now free from their debts, were unsettled and imperious, he formed another council of four hundred, a hundred out of each of the four tribes, which was to inspect all matters before they were propounded to the people, and to take care that nothing but what had been first examined should be brought before the general assembly. The upper council, or, Areopagus, he made inspectors and keepers of the laws, conceiving that the commonwealth, held by these two councils, like anchors, would be less liable to be tossed by tumults, and the people be more quiet. Such is the general statement, that Solon instituted the Areopagus; which seems to be confirmed, because Draco makes no mention of the Areopagites, but in all causes of blood refers to the Ephetæ; yet Solon's thirteenth table contains the eighth law set down in these very words: "Whoever before Solon's archonship were disfranchised, let them be restored, except those that, being condemned by the Areopagus, Ephetæ, or in the Prytaneum by the kings, for homicide, murder, or designs against the government, were in banishment when this law was made;" and these words seem to show that the Areopagus existed before Solon's laws, for who could be condemned by that council before his time, if he was the first that instituted the court? unless, which

is probable, there is some ellipsis, or want of precision in the language, and it should run thus: — "Those that are convicted of such offences as belong to the cognizance of the Areopagites, Ephetæ, or the Prytanes, when this law was made," shall remain still in disgrace, whilst others are restored; of this the reader must judge.

Amongst his other laws, one is very peculiar and surprising, which disfranchises all who stand neuter in a sedition; for it seems he would not have any one remain insensible and regardless of the public good, and securing his private affairs, glory that he has no feeling of the distempers of his country; but at once join with the good party and those that have the right upon their side, assist and venture with them, rather than keep out of harm's way and watch who would get the better. It seems an absurd and foolish law which permits an heiress, if her lawful husband fail her, to take his nearest kinsman; yet some say this law was well contrived against those who, conscious of their own unfitness, yet, for the sake of the portion, would match with heiresses, and make use of law to put a violence upon nature; for now, since she can quit him for whom she pleases, they would either abstain from such marriages, or continue them with disgrace, and suffer for their covetousness and designed affront; it is well done, moreover, to confine her to her husband's nearest kinsman, that the children may be of the same family. . . .

In all other marriages he forbade dowries to be given; the wife was to have three suits of clothes, a little inconsiderable household stuff, and that was all; for he would not have marriages contracted for gain or an estate, but for pure love, kind affection and birth of children. . . .

Another commendable law of Solon's is that which forbids men to speak evil of the dead; for it is pious to think the deceased sacred, and just, not to meddle with those that are gone, and politic, to prevent the perpetuity of discord. He likewise forbade them to speak evil of the living in the temples, the courts of justice, the public offices, or at the games, or else to pay three drachmas to the person, and two to the public. For never to be able to control passion shows a weak nature and ill-breeding; and always to moderate it is very hard, and to some impossible. And laws must look to possibilities, if the maker designs to punish few in order to their amendment, and not many to no purpose.

He is likewise much commended for his law concerning wills; for before him none could be made, but all the wealth and estate

of the deceased belonged to his family; but he by permitting them, if they had no children, to bestow it on whom they pleased, showed that he esteemed friendship a stronger tie than kindred, and affection than necessity; and made every man's estate truly his own. Yet he allowed not all sorts of legacies, but those only which were not extorted by the frenzy of a disease, charms, imprisonment, force, or the persuasions of a wife; with good reason thinking that being seduced into wrong was as bad as being forced, and that between deceit and necessity, flattery and compulsion, there was little difference, since both may equally suspend the exercise of reason.

He regulated the walks, feasts, and mourning of the women, and took away everything that was either unbecoming or immodest; when they walked abroad, no more than three articles of dress were allowed them; an obol's worth of meat and drink; and no basket above a cubit high; and at night they were not to go about unless in a chariot with a torch before them. Mourners tearing themselves to raise pity, and set wailings, and at one man's funeral to lament for another, he forbade. To offer an ox at the grave was not permitted, nor to bury above three pieces of dress with the body, or visit the tombs of any besides their own family, unless at the very funeral; most of which are likewise forbidden by our laws, but this is further added in ours, that those that are convicted of extravagance in their mournings are to be punished as soft and effeminate by the censors of women.

Observing the city to be filled with persons that flocked from all parts into Attica for security of living, and that most of the country was barren and unfruitful, and that traders at sea import nothing to those that could give them nothing in exchange, he turned his citizens to trade, and made a law that no son be obliged to relieve a father who had not bred him up to any calling. It is true, Lycurgus, having a city free from all strangers, and land, according to Euripides,

> Large for large hosts, for twice their number much,

and, above all, an abundance of laborers about Sparta, who should not be left idle, but be kept down with continual toil and work, did well to take off his citizens from laborious and mechanical occupations, and keep them to their arms, and teach them only the art of war. But Solon, fitting his laws to the state of things, and not making things to suit his laws, and finding the ground scarce rich enough to maintain the husbandmen, and altogether

incapable of feeding an unoccupied and leisured multitude, brought trades into credit, and ordered the Areopagites to examine how every man got his living, and chastise the idle. But that law was yet more rigid which, as Heraclides Ponticus delivers, declared the sons of unmarried mothers not obliged to relieve their fathers; for he that avoids the honorable form of union shows that he does not take a woman for children, but for pleasure, and thus gets his just reward, and has taken away from himself every title to upbraid his children, to whom he has made their very birth a scandal and reproach.

Solon's laws in general about women are his strangest; for he permitted any one to kill an adulterer that found him in the act; but if any one forced a free woman, a hundred drachmas was the fine; if he enticed her, twenty; except those that sell themselves openly, that is, harlots, who go openly to those that hire them. He made it unlawful to sell a daughter or a sister, unless, being yet unmarried, she was found wanton. Now it is irrational to punish the same crime sometimes very severely and without remorse, and sometimes very lightly, and as it were in sport, with a trivial fine; unless there being little money then in Athens, scarcity made those mulcts the more grievous punishment. In the valuation for sacrifices, a sheep and a bushel were both estimated at a drachma; the victor in the Isthmian games was to have for reward an hundred drachmas; the conqueror in the Olympian, five hundred; he that brought a wolf, five drachmas; for a whelp, one; the former sum, as Demetrius the Phalerian asserts, was the value of an ox, the latter, of a sheep. The prices which Solon, in his sixteenth table, sets on choice victims, were naturally far greater; yet they, too, are very low in comparison of the present. The Athenians were, from the beginning, great enemies to wolves, their fields being better for pasture than corn. Some affirm their tribes did not take their names from the sons of Ion, but from the different sorts of occupation that they followed; the soldiers were called Hoplitæ, the craftsmen Ergades, and, of the remaining two, the farmers Gedeontes, and the shepherds and graziers Ægicores.

Since the country has but few rivers, lakes, or large springs, and many used wells which they had dug, there was a law made, that, where there was a public well within a *hippicon,* that is, four furlongs, all should draw at that; but when it was farther off, they should try and procure a well of their own; and if they had dug ten fathoms deep and could find no water, they had

liberty to fetch a pitcherful of four gallons and a half in a day from their neighbors'; for he thought it prudent to make provision against want, but not to supply laziness. He showed skill in his orders about planting, for any one that would plant another tree was not to set it within five feet of his neighbor's field; but if a fig or an olive, not within nine; for their roots spread farther, nor can they be planted near all sorts of trees without damage, for they draw away the nourishment, and in some cases are noxious by their effluvia. He that would dig a pit or a ditch was to dig it at the distance of its own depth from his neighbor's ground; and he that would raise stocks of bees was not to place them within three hundred feet of those which another had already raised.

He permitted only oil to be exported, and those that exported any other fruit, the archon was solemnly to curse, or else pay an hundred drachmas himself; and this law was written in his first table, and, therefore, let none think it incredible, as some affirm, that the exportation of figs was once unlawful, and the informer against the delinquents called a sycophant. He made a law, also, concerning hurts and injuries from beasts, in which he commands the master of any dog that bit a man to deliver him up with a log about his neck, four and a half feet long; a happy device for men's security. The law concerning naturalizing strangers is of doubtful character; he permitted only those to be made free of Athens who were in perpetual exile from their own country, or came with their whole family to trade there; this he did, not to discourage strangers, but rather to invite them to a permanent participation in the privileges of the government; and, besides, he thought those would prove the more faithful citizens who had been forced from their own country, or voluntarily forsook it. The law of public entertainment (*parasitein* is his name for it) is also peculiarly Solon's; for if any man came often, or if he that was invited refused, they were punished, for he concluded that one was greedy, the other a contemner of the state.

All his laws he established for an hundred years, and wrote them on wooden tables or rollers, named axones, which might be turned round in oblong cases; some of their relics were in my time still to be seen in the Prytaneum, or common hall, at Athens. These, as Aristotle states, were called cyrbes, and there is a passage of Cratinus the comedian, —

> By Solon, and by Draco, if you please,
> Whose Cyrbes make the fibres that parch our peas.

But some say those are properly cyrbes, which contain laws concerning sacrifices and the rites of religion, and all the others axones. The council all jointly swore to confirm the laws, and every one of the Thesmothetæ vowed for himself at the stone in the market-place, that if he broke any of the statutes, he would dedicate a golden statue, as big as himself, at Delphi.

Observing the irregularity of the months, and that the moon does not always rise and set with the sun, but often in the same day overtakes and gets before him, he ordered the day should be named the Old and New, attributing that part of it which was before the conjunction to the old moon, and the rest to the new, he being the first, it seems, that understood that verse of Homer, —

The end and the beginning of the month, —

and the following day he called the new moon. After the twentieth he did not count by addition, but, like the moon itself in its wane, by subtraction; thus up to the thirtieth.

Now when these laws were enacted, and some came to Solon every day, to commend or dispraise them, and to advise, if possible, to leave out or put in something, and many criticised, and desired him to explain, and tell the meaning of such and such a passage, he, knowing that to do it was useless, and not to do it would get him ill-will, and desirous to bring himself out of all straits, and to escape all displeasure and exceptions, it being a hard thing, as he himself says,

In great affairs to satisfy all sides,

as an excuse for travelling, bought a trading vessel, and, having leave for ten years' absence, departed, hoping that by that time his laws would have become familiar.

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Chapter IV

CÆSAR'S COMMENTARIES[1]

BOOK V

The Argument

I. Cæsar orders a large fleet of peculiarly constructed ships to be built; proceeds against the Pirustæ; they submit. — II. Returns into Hither Gaul; marches against the Treviri. — III. Indutiomărus and Cingetorix. — V. Cæsar goes to port Itius; his policy in taking certain Gallic chieftains with him to Britain. — VI. Dumnorix, who was to have been in that number, by craft and violence, escapes attending Cæsar, but is slain. — VII. Cæsar proceeds on his second expedition against Britain. — IX. The bold resistance of the Britons; they are defeated. — X. The Roman fleet suffers severely in a storm. — XI. Cæsar gives orders to Labienus to build more ships; Cassivellaunus. — XII.–XIV. Description of Britain and its inhabitants. — XVII. The Britains again prepare for war, and receive a signal defeat. — XVIII. Cæsar advances into the territories of Cassivellaunus as far as the Thames; an engagement with that prince. — XIX. The stratagem of Cassivellaunus. — XX. The Trinobantes send ambassadors to Cæsar respecting the conduct of Cassivellaunus towards Mandubratius. — XXII. The latter induces four princes of Cantium to attack the Romans, by whom they are defeated. — XXIII. Cæsar receives hostages, and leads back his army into Gaul. — XXIV. He quarters his forces contrary to his custom, in several divisions. — XXV. Tasgetius. — XXVI. The revolt of Ambiorix and Cativolcus. — XXVII. Ambiorix defends himself in reference to his share in the Gallic combination. — XXVIII.–XXXI. Dispute between Titurius and Cotta. — XXXII. The valor and conduct of Cotta. — XXXVIII.–XLII. The quarters of Cicero attacked by the Eburones; he sends intelligence to Cæsar. — XLIV. The noble conduct of Pulfio and Varenus. — XLVIII.–LII. Cæsar marches to the relief of Cicero; defeats the Eburones. — LIII. Indutiomărus is thereby deterred from attacking the camp of Labienus. — LVI.–LVIII. Re-enforced, Indutiomărus attacks Labienus; his forces are routed, and he is slain; Gaul becomes more trănquil.

Chap. XII. — The interior portion of Britain is inhabited by those of whom they say that it is handed down by tradition that they were born in the island itself: the maritime portion by those who had passed over from the country of the Belgæ for the purpose of plunder and making war; almost all of whom are called by the names of those states from which being sprung they went thither, and having waged war, continued there and began to cultivate the lands. The number of the people is countless, and their buildings

[1] [Reprinted from the literal translation published by David McKay, Philadelphia, with the publisher's consent.]

exceedingly numerous, for the most part very like those of the Gauls: the number of cattle is great. They use either brass or iron rings, determined at a certain weight, as their money. Tin is produced in the midland regions; in the maritime, iron; but the quantity of it is small: they employ brass, which is imported. There, as in Gaul, is timber of every description, except beech and fir. They do not regard it lawful to eat the hare, and the cock, and the goose; they, however, breed them for amusement and pleasure. The climate is more temperate than in Gaul, the colds being less severe.

CHAP. XIV. — The most civilized of all these nations are they who inhabit Kent, which is entirely a maritime district, nor do they differ much from the Gallic customs. Most of the inland inhabitants do not sow corn, but live on milk and flesh, and are clad with skins. All the Britains, indeed, dye themselves with woad, which occasions a bluish color, and thereby have a more terrible appearance in fight. They wear their hair long, and have every part of their body shaved except their head and upper lip. Ten and even twelve have wives common to them, and particularly brothers among brothers, and parents among their children; but if there be any issue by these wives, they are reputed to be the children of those by whom respectively each was first espoused when a virgin.

BOOK VI

The Argument

I. Cæsar, apprehending commotions in Gaul, levies additional forces. — II.–VI. Defeats the Nervii, Senŏnes, Carnutes, and Menapii. — VII., VIII. Labienus defeats the Treviri. — IX. Cæsar again crosses the Rhine; the Ubii send ambassadors to plead the defence of their state. — XI.–XX. The political factions of the Gallic states. The Druids, the second order or knights, the third order or commonalty, and the mythology of the Gauls. — XXI.–XXVII. The Germans; their customs; account of some remarkable animals found in the Hercinian forest. — XXIX.–XXXI. Cæsar returns to Gaul; Ambiorix is worsted; death of Cativolcus. — XXXII.–XXXIV. The territories of the Eburones are plundered. — XXXV.–XLII. The Sigambri attack the Roman camp; some extraordinary incidents connected therewith. Cæsar arrives and restores confidence. — XLIII., XLIV. Cæsar holds an investigation respecting the conspiracy of the Senŏnes; Acco suffers capital punishment; the appointment of winter quarters; Cæsar departs for Italy.

CHAP. XI. — Since we have come to this place, it does not appear to be foreign to our subject to lay before the reader an account of the manners of Gaul and Germany, and wherein these nations differ from each other. In Gaul there are factions not

only in all the states, and in all the cantons and their divisions, but almost in each family, and of these factions those are the leaders who are considered according to their judgment to possess the greatest influence, upon whose will and determination the management of all affairs and measures depends. And that seems to have been instituted in ancient times with this view, that no one of the common people should be in want of support against one more powerful; for none [of those leaders] suffers his party to be oppressed and defrauded, and if he do otherwise, he has no influence among his party. This same policy exists throughout the whole of Gaul; for all the states are divided into two factions.

Chap. XIII. — Throughout all Gaul there are two orders of those men who are of any rank and dignity: for the commonalty is held almost in the condition of slaves, and dares to undertake nothing of itself and is admitted to no deliberation. The greater part, when they are pressed either by debt, or the large amount of their tributes, or the oppression of the more powerful, give themselves up in vassalage to the nobles, who possess over them the same rights without exception as masters over their slaves. But of these two orders, one is that of the Druids, the other that of the knights. The former are engaged in things sacred, conduct the public and the private sacrifices, and interpret all matters of religion. To these a large number of the young men resort for the purpose of instruction, and they [the Druids] are in great honor among them. For they determine respecting almost all controversies, public and private; and if any crime has been perpetrated, if murder has been committed, if there be any dispute about an inheritance, if any about boundaries, these same persons decide it; they decree rewards and punishments, if any one, either in a private or public capacity, has not submitted to their decision, they interdict him from the sacrifices. This among them is the most heavy punishment. Those who have been thus interdicted are esteemed in the number of the impious and the criminal: all shun them, and avoid their society and conversation, lest they receive some evil from their contact; nor is justice administered to them when seeking it, nor is any dignity bestowed on them. Over all these Druids one presides, who possesses supreme authority among them. Upon his death, if any individual among the rest is preeminent in dignity, he succeeds; but, if there are many equal, the election is made by the suffrages of the Druids; sometimes they even contend for the presidency with arms. These assemble at a

fixed period of the year in a consecrated place in the territories of the Carnutes, which is reckoned the central region of the whole of Gaul. Hither all, who have disputes, assemble from every part, and submit to their decrees and determinations. This institution is supposed to have been devised in Britain, and to have been brought over from it into Gaul; and now those who desire to gain a more accurate knowledge of that system generally proceed thither for the purpose of studying it.

Chap. XIV. — The Druids do not go to war, nor pay tribute together with the rest; they have an exemption from military service and a dispensation in all matters. Induced by such great advantages, many embrace this profession of their own accord, and [many] are sent to it by their parents and relations. They are said there to learn by heart a great number of verses; accordingly some remain in the course of training twenty years. Nor do they regard it lawful to commit these to writing, though in almost all other matters, in their public and private transactions, they use Greek characters. That practice they seem to me to have adopted for two reasons; because they neither desire their doctrines to be divulged among the mass of the people, nor those who learn, to devote themselves the less to the efforts of memory, relying on writing; since it generally occurs to most men, that, in their dependence on writing, they relax their diligence in learning thoroughly, and their employment of the memory. They wish to inculcate this as one of their leading tenets, that souls do not become extinct, but pass after death from one body to another, and then think that men by this tenet are in a great degree excited to valor, the fear of death being disregarded. They likewise discuss and impart to the youth many things respecting the stars and their motion, respecting the extent of the world and of our earth, respecting the nature of things, respecting the power and the majesty of the immortal gods.

Chap. XV. — The other order is that of the knights. These, when there is occasion and any war occurs (which before Cæsar's arrival was for the most part wont to happen every year, as either they on their part were inflicting injuries or repelling those which others inflicted on them), are all engaged in war. And those of them most distinguished by birth and resources, have the greatest number of vassals and dependents about them. They acknowledge this sort of influence and power only.

Chap. XVI. — The nation of all the Gauls is extremely devoted to superstitious rites; and on that account they who are troubled

with unusually severe diseases and they who are engaged in battles and dangers, either sacrifice men as victims, or vow that they will sacrifice them, and employ the Druids as the performers of those sacrifices; because they think that unless the life of a man be offered for the life of a man, the mind of the immortal gods cannot be rendered propitious, and they have sacrifices of that kind ordained for national purposes. Others have figures of vast size, the limbs of which formed of osiers they fill with living men, which being set on fire, the men perish enveloped in the flames. They consider that the oblation of such as have been taken in theft, or in robbery, of any other offence, is more acceptable to the immortal gods; but when a supply of that class is wanting, they have recourse to the oblation of even the innocent.

CHAP. XIX. — Whatever sums of money the husbands have received in the name of dowry from their wives, making an estimate of it, they add the same amount out of their own estates. An account is kept of all this money conjointly, and the profits are laid by: whichever of them shall have survived [the other], to that one the portion of both reverts together with the profits of the previous time. Husbands have power of life and death over their wives as well as over their children: and when the father of a family, born in a more than commonly distinguished rank, has died, his relations assemble, and, if the circumstances of his death are suspicious, hold an investigation upon the wives in the manner adopted towards slaves; and, if proof be obtained, put them to severe torture, and kill them. Their funerals, considering the state of civilization among the Gauls, are magnificent and costly; and they cast into the fire all things, including living creatures, which they suppose to have been dear to them when alive; and, a little before this period, slaves and dependents, who were ascertained to have been beloved by them, were, after the regular funeral rites were completed, burnt together with them.

CHAP. XX. — Those states which are considered to conduct their commonwealth more judiciously, have it ordained by their laws, that, if any person shall have heard by rumor and report from his neighbors anything concerning the commonwealth, he shall convey it to the magistrate and not impart it to any other; because it has been discovered that inconsiderate and inexperienced men were often alarmed by false reports and driven to some rash act, or else took hasty measures in affairs of the highest importance. The magistrates conceal those things which require to be kept unknown; and they disclose to the people whatever they determine to be

expedient. It is not lawful to speak of the commonwealth, except in council.

CHAP. XXI. — The Germans differ much from these usages, for they have neither Druids to preside over sacred offices, nor do they pay great regard to sacrifices. They rank in the number of the gods those alone whom they behold, and by whose instrumentality they are obviously benefited, namely, the sun, fire, and the moon; they have not heard of the other deities even by report. Their whole life is occupied in hunting and in the pursuits of the military art; from childhood they devote themselves to fatigue and hardships. . . .

CHAP. XXII. — They do not pay much attention to agriculture, and a large portion of their food consists in milk, cheese, and flesh; nor has any one a fixed quantity of land or his own individual limits; but the magistrates and the leading men each year apportion to the tribes and families, who have united together, as much land as, and in the place in which, they think proper, and the year after compel them to remove elsewhere. For this enactment they advance many reasons — lest seduced by long-continued custom, they may exchange their ardor in the waging of war for agriculture; lest they may be anxious to acquire extensive estates, and the more powerful drive the weaker from their possessions; lest they construct their houses with too great a desire to avoid cold and heat; lest the desire of wealth spring up, from which cause divisions and discords arise; and that they may keep the common people in a contented state of mind, when each sees his own means placed on an equality with [those of] the most powerful.

CHAP. XXIII. — It is the greatest glory to the several states to have as wide deserts as possible around them, their frontiers having been laid waste. They consider this the real evidence of their prowess, that their neighbors shall be driven out of their lands and abandon them, and that no one dare settle near them; at the same time they think that they shall be on that account the more secure, because they have removed the apprehension of a sudden incursion. When a state either repels war waged against it, or wages it against another, magistrates are chosen to preside over that war with such authority, that they have power of life and death. In peace there is no common magistrate, but the chiefs of provinces and cantons administer justice and determine controversies among their own people. Robberies which are committed beyond the boundaries of each state bear no infamy, and they avow that these are committed for the purpose of disciplining their youth and of pre-

venting sloth. And when any of their chiefs has said in an assembly "that he will be their leader, let those who are willing to follow, give in their names"; they who approve of both the enterprise and the man arise and promise their assistance and are applauded by the people; such of them as have not followed him are accounted in the number of deserters and traitors, and confidence in all matters is afterwards refused them. To injure guests they regard as impious; they defend from wrong those who have come to them for any purpose whatever, and esteem them inviolable; to them the houses of all are open and maintenance is freely supplied.

Chap. XXIV. — And there was formerly a time when the Gauls excelled the Germans in prowess, and waged war on them offensively, and, on account of the great number of their people and the insufficiency of their land, sent colonies over the Rhine. Accordingly, the Volcæ Tectosăges seized on those parts of Germany which are the most fruitful [and lie] around the Hercynian forest (which, I perceive, was known by report to Eratosthenes and some other Greeks, and which they call Orcynia) and settled there. Which nation to this time retains its position in those settlements, and has a very high character for justice and military merit: now also they continue in the same scarcity, indigence, hardihood, as the Germans, and use the same food and dress; but their proximity to the Province and knowledge of commodities from countries beyond the sea supplies to the Gauls many things tending to luxury as well as civilization. Accustomed by degrees to be overmatched and worsted in many engagements, they do not even compare themselves to the Germans in prowess.

Chapter V

A TREATISE ON THE SITUATION, MANNERS, AND PEOPLE OF GERMANY[1]

I. The whole vast country of Germany is separated from Gaul, from Rhætia, and Pannonia, by the Rhine and the Danube; from Dacia and Sarmatia, by a chain of mountains, and, where the mountains subside, mutual dread forms a sufficient barrier. The rest is bounded by the ocean, embracing in its depth of water several spacious bays, and islands of prodigious extent, whose kings and people are now, in some measure, known to us, the progress of our arms having made recent discoveries. . . .

II. The Germans, there is reason to think, are an indigenous race, the original natives of the country, without any intermixture of adventitious settlers from other nations. In the early ages of the world, the adventurers who issued forth in quest of new habitations, did not traverse extensive tracts of land; the first migrations were made by sea. Even at this day the Northern Ocean, vast and boundless, and, as I may say, always at enmity with mariners, is seldom navigated by ships from our quarter of the world. Putting the dangers of a turbulent and unknown sea out of the case, who would leave the softer climes of Asia, Africa, or Italy, to fix his abode in Germany? where nature offers nothing but scenes of deformity: where the inclemency of the seasons never relents; where the land presents a dreary region, without form or culture, and, if we except the affection of a native for his mother-country, without an allurement to make life supportable. In all songs and ballads, the only memorials of antiquity amongst them, the god Tuisto, who was born of the Earth, and Mannus, his son, are celebrated as the founders of the German race. Mannus, it is said, had three sons, from whom the Ingævones, who bordered on the sea-coast; the Hermiones, who inhabit the midland country; and the Istævones, who occupy the remaining tract, have all

[1] [Translated by Arthur Murphy. Mr. Murphy was born Dec. 27th, 1727, and died in 1805. The time when this treatise by Tacitus on German manners was written, is fixed by Lipsius in the fourth consulship of Nerva, and the second of Trajan, A.D. 98.]

respectively derived their names. Some indeed, taking advantage of the obscurity that hangs over remote and fabulous ages, ascribe to the god Tuisto a more numerous issue, and thence trace the names of various tribes, such as the Marsians, the Gambrivians, the Suevians, and the Vandals. The ancient date and authenticity of those names are, as they contend, clearly ascertained. The word Germany is held to be of modern addition. In support of this hypothesis, they tell us that the people who first passed the Rhine, and took possession of a canton in Gaul, though known at present by the name of Tungrians, were, in that expedition, called Germans, and thence the title assumed by a band of emigrants, in order to spread a general terror in their progress, extended itself by degrees, and became, in time, the appellation of a whole people. They have a current tradition that Hercules visited those parts. When rushing to battle, they sing, in preference to all other heroes, the praises of that ancient worthy.

III. The Germans abound with rude strains of verse, the reciters of which, in the language of the country, are called BARDS. With this barbarous poetry they inflame their minds with ardour in the day of action, and prognosticate the event from the impression which it happens to make on the minds of the soldiers, who grow terrible to the enemy, or despair of success, as the war-song produces an animated or a feeble sound. Nor can their manner of chanting this savage prelude be called the tone of human organs: it is rather a furious uproar; a wild chorus of military virtue. The vociferation used upon these occasions is uncouth and harsh, at intervals interrupted by the application of their bucklers to their mouths, and by the repercussion bursting out with redoubled force. . . .

IV. I have already acceded to the opinion of those, who think that the Germans have hitherto subsisted without intermarrying with other nations, a pure, unmixed, and independent race, unlike any other people, all bearing the marks of a distinct national character. Hence, what is very remarkable in such prodigious numbers, a family likeness throughout the nation; the same form and feature, stern blue eyes, ruddy hair, their bodies large and robust, but powerful only in sudden efforts. They are impatient of toil and labour; thirst and heat overcome them; but, from the nature of their soil and climate, they are proof against cold and hunger.

V. The face of the country, though in some parts varied, presents a cheerless scene, covered with the gloom of forests,

or deformed with wide-extended marshes; towards the boundaries of Gaul, moist and swampy; on the side of Noricum and Pannonia, more exposed to the fury of the winds. Vegetation thrives with sufficient vigour. The soil produces grain, but is unkind to fruit-trees; well stocked with cattle, but of an undersize, and deprived by nature of the usual growth and ornament of the head. The pride of a German consists in the number of his flocks and herds: they are his only riches, and in these he places his chief delight. Gold and silver are withheld from them; is it by the favour or the wrath of Heaven? I do not, however, mean to assert that in Germany there are no veins of precious ore; for who has been a miner in those regions? Certain it is, they do not enjoy the possession and use of those metals with our sensibility. There are, indeed, silver vessels to be seen amongst them, but they were presents to their chiefs or ambassadors; the Germans regard them in no better light than common earthenware. It is, however, observable, that near the borders of the empire, the inhabitants set a value upon gold and silver, finding them subservient to the purposes of commerce. The Roman coin is known in those parts, and some of our specie is not only current, but in request. In places more remote, the simplicity of ancient manners still prevails: commutation of property is their only traffic. Where money passes in the way of barter, our old coin is the most acceptable, particularly that which is indented at the edge, or stamped with the impression of a chariot and two horses, called the SERRATI and BIGATI. Silver is preferred to gold, not from caprice or fancy, but because the inferior metal is of more expeditious use in the purchase of low-priced commodities.

VI. Iron does not abound in Germany, if we may judge from the weapons in general use. Swords and large lances are seldom seen. The soldier grasps his javelin, or, as it is called in their language, his FRAM; an instrument tipped with a short and narrow piece of iron, sharply pointed, and so commodious, that, as occasion requires, he can manage it in close engagement, or in distant combat. With this, and a shield, the cavalry is completely armed. The infantry have an addition of missive weapons. Each man carries a considerable number, and, being naked, or, at least, not encumbered by his light mantle, he throws his weapon to a distance almost incredible. A German has no attention to the ornament of his person: his shield is the object of his care, and this he decorates with the liveliest colours. Breastplates are uncommon. In a whole army you will not see more than one or two helmets. Their

horses have neither swiftness nor elegance of shape, nor are they trained to the various evolutions of the Roman cavalry. To advance in a direct line, or wheel suddenly to the right, is the whole of their skill, and this they perform in so compact a body, that not one is thrown out of his rank. According to the best estimate, the infantry form the national strength, and, for that reason, always fight intermixed with the cavalry. The flower of their youth, able by their vigour and activity to keep pace with the movements of the horse, are selected for this purpose, and placed in the front of the lines. The number of these is fixed and certain: each canton sends a hundred, from that circumstance called HUNDREDERS by the army. The name was at first numerical only: it is now a title of honour. Their order of battle presents the form of a wedge. To give ground in the heat of action, provided you return to the charge, is military skill, not fear, or cowardice. In the most fierce and obstinate engagement, even when the fortune of the day is doubtful, they make it a point to carry off their slain. To abandon their shield is a flagitious crime. The person guilty of it is interdicted from religious rites, and excluded from the assembly of the state. Many, who survived their honour on the day of battle, have closed a life of ignominy by a halter.

VII. The kings in Germany owe their election to the nobility of their birth; the generals are chosen for their valour. The power of the former is not arbitrary or unlimited; the latter command more by warlike example than by their authority. To be of a prompt and daring spirit in battle, and to attack in the front of the lines, is the popular character of the chieftain: when admired for his bravery, he is sure to be obeyed. Jurisdiction is vested in the priests. It is theirs to sit in judgment upon all offences. By them, delinquents are put in irons, and chastised with stripes. The power of punishing is in no other hands. When exerted by the priests, it has neither the air of vindictive justice, nor of military execution; it is rather a religious sentence, inflicted with the sanction of the god, who, according to the German creed, attends their armies on the day of battle. To impress on their minds the idea of a tutelar deity, they carry with them to the field certain images and banners, taken from their usual depository, the religious groves. A circumstance which greatly tends to inflame them with heroic ardour, is the manner in which their battalions are formed. They are neither mustered nor embodied by chance. They fight in clans, united by consanguinity, a family of warriors. Their tenderest pledges are near them in the field.

In the heat of the engagement, the soldier hears the shrieks of his wife, and the cries of his children. These are the darling witnesses of his conduct, the applauders of his valour, at once beloved and valued. The wounded seek their mothers and their wives: undismayed at the sight, the women count each honourable scar, and suck the gushing blood. They are even hardy enough to mix with the combatants, administering refreshment, and exhorting them to deeds of valour.

VIII. From tradition, they have a variety of instances of armies put to the rout, and by the interposition of their wives and daughters again incited to renew the charge. Their women saw the ranks give way, and rushing forward in the instant, by the vehemence of their cries and supplications, by opposing their breasts to danger, and by representing the horrors of slavery, restored the order of the battle. To a German mind the idea of a woman led into captivity is insupportable. In consequence of this prevailing sentiment, the states which deliver as hostages the daughters of illustrious families, are bound by the most effectual obligation. There is, in their opinion, something sacred in the female sex, and even the power of foreseeing future events. Their advice is, therefore, always heard; they are frequently consulted, and their responses are deemed oracular. We have seen, in the reign of Vespasian, the famous Veleda revered as a divinity by her countrymen. Before her time, Aurinia and others were held in equal veneration; but a veneration founded on sentiment and superstition, free from that servile adulation which pretends to people heaven with human deities.

IX. Mercury is the god chiefly adored in Germany. On stated days they think it lawful to offer to him human victims. They sacrifice to Hercules and Mars such animals as are usually slain in honour of the gods. In some parts of the country of the Suevians, the worship of Isis is established. To trace the introduction of ceremonies, which had their growth in another part of the world, were an investigation for which I have no materials: suffice it to say, that the figure of a ship (the symbolic representation of the goddess) clearly shows that the religion was imported into the country. Their deities are not immured in temples, nor represented under any kind of resemblance to the human form. To do either, were, in their opinion, to derogate from the majesty of superior beings. Woods and groves are the sacred depositories; and the spot being consecrated to those pious uses, they give to that sacred recess the name of the divinity that fills the place, which is

never profaned by the steps of man. The gloom fills every mind with awe; revered at a distance, and never seen but with the eye of contemplation.

X. Their attention to auguries, and the practice of divining by lots, is conducted with a degree of superstition not exceeded by any other nation. Their mode of proceeding by lots is wonderfully simple. The branch of a fruit-tree is cut into small pieces, which, being all distinctly marked, are thrown at random on a white garment. If a question of public interest be depending, the priest of the canton performs the ceremony; if it be nothing more than a private concern, the master of the family officiates. With fervent prayers offered up to the gods, his eyes devoutly raised to heaven, he holds up three times each segment of the twig, and as the marks rise in succession, interprets the decrees of fate. If appearances prove unfavourable, there ends all consultation for that day: if, on the other hand, the chances are propitious, they require, for greater certainty, the sanction of auspices. The well-known superstition, which in other countries consults the flight and notes of birds, is also established in Germany; but to receive intimation of future events from horses is the peculiar credulity of the country. For this purpose a number of milk-white steeds, unprofaned by mortal labour, are constantly maintained at the public expense, and placed to pasture in the religious groves. When occasion requires, they are harnessed to a sacred chariot, and the priest, accompanied by the king, or chief of the state, attends to watch the motions and the neighing of the horses. No other mode of augury is received with such implicit faith by the people, the nobility, and the priesthood. The horses, upon these solemn occasions, are supposed to be the organs of the gods, and the priests their favoured interpreters. They have still another way of prying into futurity, to which they have recourse, when anxious to know the issue of an important war. They seize, by any means in their power, a captive from the adverse nation, and commit him in single combat with a champion selected from their own army. Each is provided with weapons after the manner of his country, and the victory, wherever it falls, is deemed a sure prognostic of the event.

XI. In matters of inferior moment the chiefs decide; important questions are reserved for the whole community. Yet even in those cases where all have a voice, the business is discussed and prepared by the chiefs. The general assembly, if no sudden alarm calls the people together, has its fixed and stated periods, either

at the new or full moon. This is thought the season most propitious to public affairs. Their account of time differs from that of the Romans: instead of days they reckon the number of nights. Their public ordinances are so dated; and their proclamations run in the same style. The night, according to them, leads the day. Their passion for liberty is attended with this ill consequence: when a public meeting is announced, they never assemble at the stated time. Regularity would look like obedience: to mark their independent spirit, they do not convene at once, but two or three days are lost in delay. When they think themselves sufficiently numerous, the business begins. Each man takes his seat, completely armed. Silence is proclaimed by the priests, who still retain their coercive authority. The king, or chief of the community, opens the debate: the rest are heard in their turn, according to age, nobility of descent, renown in war, or fame for eloquence. No man dictates to the assembly: he may persuade, but cannot command. When anything is advanced not agreeable to the people, they reject it with a general murmur. If the proposition pleases, they brandish their javelins. This is their highest and most honourable mark of applause: they assent in a military manner, and praise by the sound of their arms.

XII. In this council of the state, accusations are exhibited, and capital offences prosecuted. Pains and penalties are proportioned to the nature of the crime. For treason and desertion, the sentence is to be hanged on a tree: the coward, and such as are guilty of unnatural practices, are plunged under a hurdle into bogs and fens. In these different punishments, the point and spirit of the law is, that crimes which affect the state may be exposed to public notoriety: infamous vice cannot be too soon buried in oblivion. He who is convicted of transgressions of an inferior nature, pays a mulct of horses, or of cattle. Part of that fine goes to the king or the community, and part to the person injured or to his family. It is in these assemblies that princes are chosen and chiefs elected to act as magistrates in the several cantons of the state. To each of these judicial officers, assistants are appointed from the body of the people, to the number of a hundred, who attend to give their advice, and strengthen the hands of justice.

XIII. A German transacts no business, public or private, without being completely armed. The right of carrying arms is assumed by no person whatever, till the state has declared him duly qualified. The young candidate is introduced before the assembly, where one of the chiefs, or his father, or some near rela-

tion, provides him with a shield and javelin. This, with them, is the manly gown: the youth from that moment ranks as a citizen; till then he was considered as part of the household; he is now a member of the commonwealth. In honour of illustrious birth, and to mark the sense men entertain of the father's merit, the son, though yet of tender years, is called to the dignity of a prince or chief. Such as are grown up to manhood, and have signalised themselves by a spirit of enterprise, have always a number of retainers in their train. Where merit is conspicuous, no man blushes to be seen in the list of followers, or companions. A clanship is formed in this manner, with degrees of rank and subordination. The chief judges the pretensions of all, and assigns to each man his proper station. A spirit of emulation prevails among his whole train, all struggling to be the first in favour, while the chief places all his glory in the number and intrepidity of his companions. In that consists his dignity; to be surrounded by a band of young men is the source of his power; in peace, his brightest ornament; in war, his strongest bulwark. Nor is his fame confined to his own country; it extends to foreign nations, and is then of the first importance, if he surpasses his rivals in the number and courage of his followers. He receives presents from all parts; ambassadors are sent to him; and his name alone is often sufficient to decide the issue of a war.

XIV. In the field of action, it is disgraceful to the prince to be surpassed in valour by his companions; and not to vie with him in martial deeds, is equally a reproach to his followers. If he dies in the field, he who survives him survives to live in infamy. All are bound to defend their leader, to succour him in the heat of action, and to make even their own actions subservient to his renown. This is the bond of union, the most sacred obligation. The chief fights for victory; the followers for their chief. If, in the course of a long peace, the people relax into sloth and indolence, it often happens that the young nobles seek a more active life in the service of other states engaged in war. The German mind cannot brook repose. The field of danger is the field of glory. Without violence and rapine, a train of dependents cannot be maintained. The chief must show his liberality, and the follower expects it. He demands, at one time this warlike horse, at another, that victorious lance imbued with the blood of the enemy. The prince's table, however inelegant, must always be plentiful: it is the only pay of his followers. War and depredation are the ways and means of the chieftain. To cultivate the earth, and wait the

regular produce of the seasons, is not the maxim of a German: you will more easily persuade him to attack the enemy, and provoke honourable wounds in the field of battle. In a word, to earn by the sweat of your brow, what you might gain by the price of your blood, is, in the opinion of a German, a sluggish principle, unworthy of a soldier.

XV. When the state has no war to manage, the German mind is sunk in sloth. The chase does not afford sufficient employment. The time is passed in sleep and gluttony. The intrepid warrior, who in the field braved every danger, becomes in time of peace a listless sluggard. The management of his house and lands he leaves to the women, to the old men, and the infirm part of his family. He himself lounges in stupid repose, by a wonderful diversity of nature exhibiting in the same man the most inert aversion to labour, and the fiercest principle of action. It is a custom established in the several states, to present a contribution of corn and cattle to their chieftains. Individuals follow the example, and this bounty proves at once an honour to the prince, and his best support. Presents are also sent from the adjacent states, as well by private persons, as in the name of the community. Nothing is so flattering to the pride of the chiefs as those foreign favours, consisting of the best horses, magnificent armour, splendid harness, and beautiful collars. The Romans have lately taught them to receive presents of money.

XVI. The Germans, it is well known, have no regular cities; nor do they allow a continuity of houses. They dwell in separate habitations, dispersed up and down, as a grove, a meadow, or a fountain, happens to invite. They have villages, but not in our fashion, with a series of connected buildings. Every tenement stands detached, with a vacant piece of ground round it, either to prevent accidents by fire, or for want of skill in the art of building. They neither know the use of mortar nor of tiles. They build with rude materials, regardless of beauty, order, and proportion. Particular parts are covered over with a kind of earth so smooth and shining, that the natural veins have some resemblance to the lights and shades of painting. Besides these habitations, they have a number of subterraneous caves, dug by their own labour, and carefully covered over with dung; in winter their retreat from cold, and the repository of their corn. In those recesses they not only find a shelter from the rigour of the season, but in times of foreign invasion, their effects are safely concealed. The enemy lays waste the open country, but the hidden treasure escapes the

general ravage; safe in its obscurity, or because the search would be attended with too much trouble.

XVII. The clothing in use is a loose mantle, made fast with a clasp, or when that cannot be had, with a thorn. Naked in other respects, they loiter away whole days by the fireside. The rich wear a garment, not, indeed, displayed and flowing, like the Parthians, or the people of Sarmatia, but drawn so tight, that the form of the limbs is palpably expressed. The skins of wild animals are also much in use. Near the frontier, on the borders of the Rhine, the inhabitants wear them, but with an air of neglect, that shows them altogether indifferent about the choice. The people who live more remote, near the northern seas, and have not acquired by commerce a taste for new-fashioned apparel, are more curious in the selection. They choose particular beasts, and, having stripped off the furs, clothe themselves with the spoil, decorated with parti-coloured spots, or fragments taken from the skins of fish that swim the ocean as yet unexplored by the Romans. In point of dress there is no distinction between the sexes, except that the garment of the women is frequently made of linen, adorned with purple stains, but without sleeves, leaving the arms and part of the bosom uncovered.

XVIII. Marriage is considered as a strict and sacred institution. In the national character there is nothing so truly commendable. To be contented with one wife, is peculiar to the Germans. They differ, in this respect, from all other savage nations. There are, indeed, a few instances of polygamy; not, however, the effect of loose desire, but occasioned by the ambition of various families, who court the alliance of the chief distinguished by the nobility of his rank and character. The bride brings no portion; she receives a dowry from her husband. In the presence of her parents and relations, he makes a tender of part of his wealth; if accepted, the match is approved. In the choice of the presents, female vanity is not consulted. There are no frivolous trinkets to adorn the future bride. The whole fortune consists of oxen, a caparisoned horse, a shield, a spear, and a sword. She in return delivers a present of arms, and, by this exchange of gifts, the marriage is concluded. This is the nuptial ceremony, this the bond of union, these their hymeneal gods. Lest the wife should think her sex an exemption from the rigours of the severest virtue, and the toils of war, she is informed of her duty by the marriage ceremony, and thence she learns, that she is received by her husband to be his partner in toil and danger, to dare with him in war, and suffer with him in

peace. The oxen yoked, the horse accoutred, and the arms given on the occasion, inculcate this lesson; and thus she is prepared to live, and thus to die. These are the terms of their union: she receives her armour as a sacred treasure, to be preserved inviolate, and transmitted with honour to her sons, a portion for their wives, and from them descendible to her grandchildren.

XIX. In consequence of these manners, the married state is a life of affection and female constancy. The virtue of the woman is guarded from seduction; no public spectacles to seduce her; no banquets to inflame her passions; no baits of pleasure to disarm her virtue. The art of intriguing by clandestine letters is unknown to both sexes. Populous as the country is, adultery is rarely heard of: when detected, the punishment is instant, and inflicted by the husband. He cuts off the hair of his guilty wife, and, having assembled her relations, expels her naked from his house, pursuing her with stripes through the village. To public loss of honour no favour is shown. She may possess beauty, youth, and riches; but a husband she can never obtain. Vice is not treated by the Germans as a subject of raillery, nor is the profligacy of corrupting and being corrupted called the fashion of the age. By the practice of some states, female virtue is advanced to still higher perfection: with them none but virgins marry. When the bride has fixed her choice, her hopes of matrimony are closed for life. With one husband, as with one life, one mind, one body, every woman is satisfied; in him her happiness is centred; her desires extend no further; and the principle is not only an affection for her husband's person, but a reverence for the married state. To set limits to population, by rearing up only a certain number of children, and destroying the rest, is accounted a flagitious crime. Among the savages of Germany, virtuous manners operate more than good laws in other countries.

XX. In every family the children are reared up in filth. They run about naked, and in time grow up to that strength and size of limb which we behold with wonder. The infant is nourished at the mother's breast, not turned over to nurses and to servants. No distinction is made between the future chieftain and the infant son of a common slave. On the same ground, and mixed with the same cattle, they pass their days, till the age of manhood draws the line of separation, and early valour shows the person of ingenuous birth. In the warm season of mutual vigour the match [marriage] is made, and the children of the marriage have the constitution of their parents. The uncle by the mother's side

regards his nephews with an affection nothing inferior to that of their father. With some, the relation of the sister's children to their maternal uncle is held to be the strongest tie of consanguinity, insomuch that in demanding hostages, that line of kindred is preferred, as the most endearing objects of the family, and, consequently, the most tender pledges. The son is always heir to his father. Last wills and testaments are not in use. In case of failure of issue, the brothers of the deceased are next in succession, or else the paternal or maternal uncles. A numerous train of relations is the comfort and the honour of old age. To live without raising heirs to yourself is no advantage in Germany.

XXI. To adopt the quarrels as well as the friendships of your parents and relations is held to be an indispensable duty. In their resentments, however, they are not implacable. Injuries are adjusted by a settled measure of compensation. Atonement is made for homicide by a certain number of cattle, and by that satisfaction the whole family is appeased: a happy regulation, than which nothing can be more conducive to the public interest, since it serves to curb that spirit of revenge which is the natural result of liberty in the excess. Hospitality and convivial pleasures are nowhere so liberally enjoyed. To refuse admittance to a guest were an outrage against humanity. The master of the house welcomes every stranger, and regales him to the best of his ability. If his stock falls short, he becomes a visitor to his neighbour, and conducts his new acquaintance to a more plentiful table. They do not wait to be invited, nor is it of any consequence, since a cordial reception is always certain. Between an intimate and an entire stranger no distinction is made. The law of hospitality is the same. The departing guest receives as a present whatever he desires, and the host retaliates by asking with the same freedom. A German delights in the gifts which he receives; yet by bestowing he imputes nothing to you as a favour, and for what he receives he acknowledges no obligation.

XXII. In this manner the Germans pride themselves upon their frankness and generosity. Their hours of rest are protracted to broad daylight. As soon as they rise, the first thing they do is to bathe, and generally, on account of the intense severity of the climate, in warm water. They then betake themselves to their meal, each on a separate seat, and at his own table. Having finished their repast, they proceed completely armed to the despatch of business, and frequently to a convivial meeting. To devote both day and night to deep drinking is a disgrace to no man.

Disputes, as will be the case with people in liquor, frequently arise, and are seldom confined to opprobrious language. The quarrel generally ends in a scene of blood. Important subjects, such as the reconciliation of enemies, the forming of family alliances, the election of chiefs, and even peace and war, are generally canvassed in their carousing festivals. The convivial moment, according to their notion, is the true season for business, when the mind opens itself in plain simplicity, or grows warm with bold and noble ideas. Strangers to artifice, and knowing no refinement, they tell their sentiments without disguise. The pleasure of the table expands their hearts, and calls forth every secret. On the following day the subject of debate is again taken into consideration, and thus two different periods of time have their distinct uses; when warm, they debate; when cool, they decide.

XXIII. Their beverage is a liquor drawn from barley or from wheat, and, like the juice of the grape, fermented to a spirit. The settlers on the banks of the Rhine provide themselves with wine. Their food is of the simplest kind; wild apples, the flesh of an animal recently killed, or coagulated milk. Without skill in cookery, or without seasoning to stimulate the palate, they eat to satisfy nature. But they do not drink merely to quench their thirst. Indulge their love of liquor to the excess which they require, and you need not employ the terror of your arms; their own vices will subdue them.

XXIV. Their public spectacles boast of no variety. They have but one sort, and that they repeat at all their meetings. A band of young men make it their pastime to dance entirely naked amidst pointed swords and javelins. By constant exercise, this kind of exhibition has become an art, and art has taught them to perform with grace and elegance. Their talents, however, are not let out for hire. Though some danger attends the practice, the pleasure of the spectator is their only recompense. In the character of a German there is nothing so remarkable as his passion for play. Without the excuse of liquor (strange as it may seem!), in their cool and sober moments they have recourse to dice, as to a serious and regular business, with the most desperate spirit committing their whole substance to chance, and when they have lost their all, putting their liberty and even their persons upon the last hazard of the die. The loser yields himself to slavery. Young, robust, and valiant, he submits to be chained, and even exposed to sale. Such is the effect of a ruinous and inveterate habit. They are victims to folly, and they call themselves men of honour. The

winner is always in a hurry to barter away the slaves acquired by success at play; he is ashamed of his victory, and therefore puts away the remembrance of it as soon as possible.

XXV. The slaves in general are not arranged at their several employments in the household affairs, as is the practice at Rome. Each has his separate habitation, and his own establishment to manage. The master considers him as an agrarian dependent, who is obliged to furnish a certain quantity of grain, of cattle, or of wearing apparel. The slave obeys, and the state of servitude extends no further. All domestic affairs are managed by the master's wife and children. To punish a slave with stripes, to load him with chains, or condemn him to hard labour, is unusual. It is true, that slaves are sometimes put to death, not under colour of justice, or of any authority vested in the master; but in a transport of passion, in a fit of rage, as is often the case in a sudden affray; but it is also true, that this species of homicide passes with impunity. The freedmen are not of much higher consideration than the actual slaves; they obtain no rank in the master's family, and, if we except the parts of Germany where monarchy is established, they never figure on the stage of public business. In despotic governments they rise above the men of ingenuous birth, and even eclipse the whole body of the nobles. In other states the subordination of the freedmen is a proof of public liberty.

XXVI. The practice of placing money at interest, and reaping the profits of usury, is unknown in Germany; and that happy ignorance is a better prevention of the evil than a code of prohibitory laws. In cultivating the soil, they do not settle on one spot, but shift from place to place. The state or community takes possession of a certain tract proportioned to its number of hands; allotments are afterwards made to individuals according to their rank and dignity. In so extensive a country, where there is no want of land, the partition is easily made. The ground tilled in one year, lies fallow the next, and a sufficient quantity always remains, the labour of the people being by no means adequate to the extent or goodness of the soil. Nor have they the skill to make orchard plantations, to enclose the meadow grounds, or to lay out and water gardens. From the earth they demand nothing but corn. Hence their year is not, as with the Romans, divided into four seasons. They have distinct ideas of winter, spring, and summer, and their language has terms for each; but they neither know the blessings nor the name of autumn.

XXVII. Their funerals have neither pomp nor vain ambition.

When the bodies of illustrious men are to be burned, they choose a particular kind of wood for the purpose, and have no other attention. The funeral pile is neither strewed with garments nor enriched with fragrant spices. The arms of the deceased are committed to the flames, and sometimes his horse. A mound of turf is raised to his memory, and this, in their opinion, is a better sepulchre than those structures of laboured grandeur, which display the weakness of human vanity, and are, at best, a burden to the dead. Tears and lamentations are soon at an end, but their regret does not so easily wear away. To grieve for the departed is comely in the softer sex. The women weep for their friends; the men remember them.

XXVIII. This is the sum of what I have been able to collect touching the origin of the Germans, and the general manners of the people. I now shall enter into a more minute description of the several states, their peculiar rites, and the distinctive character of each; observing at the same time, which were the nations that first passed the Rhine, and transplanted themselves into Gaul. That the Gauls, in ancient times, were superior to the Germans, we have the authority of Julius Cæsar, that illustrious historian of his own affairs. From what is stated by that eminent writer, it is highly probable that colonies from Gaul passed over into Germany: for, in fact, how could a river check the migrations of either nation, when it increased in strength, and multiplied its numbers? So weak an obstacle could not repel them from taking possession of a country, not as yet marked out by power, and of course, open to the first occupant. We find, accordingly, that the whole region between the Hercynian forest, the Maine and the Rhine, was occupied by the Helvetians, and the tract beyond it by the Boians; both originally Gallic nations. The name of BOIEMUM, which remains to this day, shows the ancient state of the country, though it has since received a new race of inhabitants. Whether the Araviscians, who settled in Pannonia, were originally a colony from the Osi, a people of Germany; or, on the other hand, whether the Osi overflowed into Germany from the Araviscians, cannot now be ascertained. This much is certain, the laws, the manners, and language of both nations are still the same. But which of them first passed the Danube? The same good and evil were to be found on both sides of the river; equal poverty and equal independence. To be thought of German origin is the ambition of the Treverians and the Nervians, both conceiving, that the reproach of Gallic softness and effeminacy, which still infect their national

manners, may be lost in the splendour of a warlike descent. The Vangiones, the Tribocians, and the Nemetes, who stretch along the banks of the Rhine, are, beyond all doubt, of German extraction. The Ubians, for their services, were made a Roman colony, and, with their own consent, became known by the name of AGRIPPINIANS, in honour of their founder; and yet they still look back with pride to their German origin. They issued formerly from that country, and, having given proof of their fidelity, obtained an allotment of territory on the banks of the Rhine, not so much with a view to their security, as to make them a guard to defend the Roman frontier.

XXIX. Of all these various nations the Batavians are the most brave and warlike. Incorporated formerly with the Cattians, but driven out by intestine divisions, they took possession of an island, formed by the river Rhine, where, without any extent of land on the continent, they established a canton in alliance with the Romans. The honour of that ancient friendship they still enjoy, with the addition of peculiar privileges. They are neither insulted with taxes, nor harrassed by revenue officers. Free from burdens, imposts, and tributes, they are reserved for the day of battle; a nursery of soldiers. The Mattiaci are in like manner attached to the interest of the Romans. In fact, the limits of the empire have been enlarged, and the terror of our arms has spread beyond the Rhine and the former boundaries. Hence the Mattiaci, still enjoying their own side of the river, are Germans by their situation, yet in sentiment and principle the friends of Rome; submitting, like the Batavians, to the authority of the empire; but never having been transplanted, they still retain, from their soil and climate, all the fierceness of their native character. The people between the Rhine and the Danube, who occupy a certain tract, subject to an impost of one tenth, and therefore called the Decumate lands, are not to be reckoned among the German nations. The Gauls, from their natural levity prone to change, and rendered desperate by their poverty, were the first adventurers into that vacant region. The Roman frontier, in process of time, being advanced, and garrisons stationed at proper posts, that whole country became part of a province, and the inhabitants of course were reduced to subjection.

XXX. Beyond the Mattiaci lies the territory of the Cattians, beginning at the Hercynian forest, but not, like other parts of Germany, a wide and dreary level of fens and marshes. A continued range of hills extends over a prodigious tract, till growing thinner by degrees they sink at last into an open country. The

Hercynian forest attends its favourite Cattians to their utmost boundary, and there leaves them, as it were, with regret. The people are robust and hardy; their limbs well braced; their countenance fierce, and their minds endowed with vigour beyond the rest of their countrymen. Considered as Germans, their understanding is quick and penetrating. They elect officers fit to command, and obey them implicitly; they keep their ranks, and know how to seize their opportunity; they restrain their natural impetuosity, and wait for the attack; they arrange with judgment the labours of the day, and throw up intrenchments for the night; trusting little to fortune, they depend altogether on their valour; and, what is rare in the history of Barbarians, and never attained without regular discipline, they place their confidence, not in the strength of their armies, but entirely in their general. The infantry is their main strength. Each soldier carries, besides his arms, his provision and a parcel of military tools. You may see other armies rushing to a battle; the Cattians march to a war. To skirmish in detached parties, or to sally out on a sudden emergence, is not their practice. A victory hastily gained, or a quick retreat, may suit the genius of the cavalry; but all that rapidity, in the opinion of the Cattians, denotes want of resolution: perseverance is the true mark of courage.

XXXI. A custom, known, indeed, in other parts of Germany, but adopted only by a few individuals of a bold and ardent spirit, is with the Cattians a feature of the national character. From the age of manhood they encourage the growth of their hair and beard; nor will any one, till he has slain an enemy, divest himself of that excrescence, which by a solemn vow he has devoted to heroic virtue. Over the blood and spoils of the vanquished, the face of the warrior is, for the first time, displayed. The Cattian then exults; he has now answered the true end of his being, and has proved himself worthy of his parents and his country. The sluggard continues unshorn, with the uncouth horrors of his visage growing wilder to the close of his days. The men of superior courage and uncommon ferocity wear also an iron ring, in that country a badge of infamy, and with that, as with a chain, they appear self-condemned to slavery, till by the slaughter of an enemy they have redeemed their freedom. With this extraordinary habit, the Cattians are in general much delighted. They grow grey under a vow of heroism, and by their voluntary distinctions render themselves conspicuous to their friends and enemies. In every engagement the first attack is made by them: they claim the front

of the line as their right, presenting to the enemy an appearance wild and terrible. Even in the time of peace they retain the same ferocious aspect; never softened with an air of humanity. They have no house to dwell in, no land to cultivate, no domestic care to employ them. Wherever chance conducts them, they are sure of being maintained. Lavish of their neighbours' substance, and prodigal of their own, they persist in this course, till towards the decline of life their drooping spirit is no longer equal to the exertions of a fierce and rigid virtue.

XXXII. The Usipians and Tencterians border on the Cattians. Their territory lies on the banks of the Rhine, where that river, still flowing in one regular channel, forms a sufficient boundary. In addition to their military character, the Tencterians are famous for the discipline of their cavalry. Their horse is no way inferior to the infantry of the Cattians. The wisdom of their ancestors formed the military system, and their descendants hold it in veneration. Horsemanship is the pride of the whole country, the pastime of their children, the emulation of their youth, and the habit of old age. With their goods and valuable effects their horses pass as part of the succession, not however, by the general rule of inheritance, to the eldest son, but, in a peculiar line, to that son who stands distinguished by his valour and his exploits in war.

XXXIII. In the neighbourhood of the last-mentioned states formerly occurred the Bructerians, since that time dispossessed of their territory, and, as fame reports, now no longer a people. The Chamavians and Angrivarians, it is said, with the consent of the adjacent tribes, invaded the country, and pursued the ancient settlers with exterminating fury. The intolerable pride of the Bructerians drew upon them this dreadful catastrophe. The love of plunder was, no doubt, a powerful motive; and, perhaps, the event was providentially ordained in favour of the Roman people. Certain it is, the gods have of late indulged us with the view of a fierce engagement, and a scene of carnage, in which above sixty thousand of the enemy fell a sacrifice, not to the arms of Rome, but, more magnificent still! to the rage of their own internal discord, all cut off, as it were in a theatre of war, to furnish a spectacle to the Roman army. May this continue to be the fate of foreign nations! If not the friends of Rome, let them be enemies to themselves. For in the present tide of our affairs, what can fortune have in store so devoutly to be wished for as civil dissension amongst our enemies?

XXXIV. At the back of the states, which I have now described,

lie the Dulgibinians and the Chasuarians, with other nations of inferior note. In front occurs the country of the Frisians, divided into two communities, called, on account of their degrees of strength, the Greater and the Lesser Frisia. Both extend along the margin of the Rhine as far as the ocean, enclosing within their limits lakes of vast extent, where the fleets of Rome have spread their sails. Through that outlet we have attempted the Northern Ocean, where, if we may believe the account of navigators, the Pillars of Hercules are seen still standing on the coast; whether it be, that Hercules did in fact visit those parts, or that whatever is great and splendid in all quarters of the globe is by common consent ascribed to that ancient hero. Drusus Germanicus was an adventurer in those seas. He did not want a spirit of enterprise; but the navigation was found impracticable in that tempestuous ocean, which seemed to forbid any further discovery of its own element, or the labours of Hercules. Since that time no expedition has been undertaken: men conceived that to respect the mysteries of the gods, and believe without inquiry, would be the best proof of veneration.

XXXV. We have hitherto traced the western side of Germany. From the point where we stop, it stretches away with a prodigious sweep towards the north. In this vast region, the first territory that occurs is that of the Chaucians, beginning on the confines of the Frisians, and, though at the extremity bounded by the seashore, yet running at the back of all the nations already described, till, with an immense compass, it reaches the borders of the Cattians. Of this immeasurable tract it is not sufficient to say that the Chaucians possess it: they even people it. Of all the German nations, they are, beyond all question, the most respectable. Their grandeur rests upon the surest foundation, the love of justice; wanting no extension of territory, free from avarice and ambition, remote and happy, they provoke no wars, and never seek to enrich themselves by rapine and depredation. Their importance among the nations round them is undoubtedly great; but the best evidence of it is, that they have gained nothing by injustice. Loving moderation, yet uniting to it a warlike spirit, they are ever ready in a just cause to unsheathe the sword. Their armies are soon in the field. In men and horses, their resources are great, and even in profound tranquillity their fame is never tarnished.

XXXVI. Bordering on the side of the Chaucians, and also of the Cattians, lies the country of the Cheruscans; a people by a

long disuse of arms enervated and sunk in sloth. Unmolested by their neighbours, they enjoyed the sweets of peace, forgetting that amidst powerful and ambitious neighbours, the repose which you enjoy serves only to lull you into a calm, always pleasing, but deceitful in the end. When the sword is drawn, and the power of the strongest is to decide, you talk in vain of equity and moderation: those virtues always belong to the conqueror. Thus it has happened to the Cheruscans: they were formerly just and upright; at present they are called fools and cowards. Victory has transferred every virtue to the Cattians, and oppression takes the name of wisdom. The downfall of the Cheruscans drew after it that of the Fosi, a contiguous nation, in their day of prosperity never equal to their neighbours, but fellow-sufferers in their ruin.

XXXVII. In the same northern part of Germany we find the Cimbrians on the margin of the ocean; a people at present of small consideration, though their glory can never die. Monuments of their former strength and importance are still to be seen on either shore. Their camps and lines of circumvallation are not yet erased. From the extent of ground which they occupied, you may even now form an estimate of the force and resources of the state, and the account of their grand army, which consisted of such prodigious numbers, seems to be verified. It was in the year of Rome six hundred and forty, in the consulship of Cæcilius Metellus and Papirius Carbo, that the arms of the Cimbrians first alarmed the world. If from that period we reckon to the second consulship of the emperor Trajan, we shall find a space of near two hundred and ten years: so long has Germany stood at bay with Rome! In the course of so obstinate a struggle, both sides have felt alternately the severest blows of fortune, and the worst calamities of war. Not the Samnite, nor the republic of Carthage, nor Spain, nor Gaul, nor even the Parthian, has given such frequent lessons to the Roman people. The power of the Arsacidæ was not so formidable as German liberty. If we except the slaughter of Crassus and his army, what has the east to boast of? Their own commander, Pacorus, was cut off, and the whole nation was humbled by the victor of Ventidius. The Germans can recount their triumphs over Carbo, Cassius, Scaurus Aurelius, Servilius Cæpio, and Cneius Manlius, all defeated, or taken prisoners. With them the republic lost five consular armies; and since that time, in the reign of Augustus, Varus perished with his three legions. Caius Marius, it is true, defeated the Germans in Italy; Julius Cæsar

made them retreat from Gaul: and Drusus, Tiberius, and Germanicus, overpowered them in their own country; but how much blood did those victories cost us! The mighty projects of Caligula ended in a ridiculous farce. From that period an interval of peace succeeded, till, roused at length by the dissensions of Rome, and the civil wars that followed, they stormed our legions in their winter quarters, and even planned the conquest of Gaul. Indeed we forced them to repass the Rhine; but from that time what has been our advantage? We have triumphed, and Germany is still unconquered.

XXXVIII. The Suevians are the next that claim attention. Possessing the largest portion of Germany, they do not, like the Cattians and Tencterians, form one state or community, but have among themselves several subdivisions, or inferior tribes, known by distinct appellations, yet all comprehended under the general name of Suevians. It is the peculiar custom of this people to braid the hair, and tie it up in a knot. Between them and the rest of the Germans this is the mark of distinction. In their own country it serves to discriminate the free-born from the slave. If the same mode is seen in other states, introduced by ties of consanguinity, or, as often happens, by the propensity of men to imitate foreign manners, the instances are rare, and confined entirely to the season of youth. With the Suevians the custom is continued through life: men far advanced in years are seen with their hoary locks interwoven, and fastened behind, or sometimes gathered into a shaggy knot on the crown of the head. The chiefs are more nicely adjusted: they attend to ornament, but it is a manly attention, not the spirit of intrigue or the affectation of appearing amiable in the eyes of women. When going to engage the enemy, they fancy that from the high structure of their hair they appear taller and gain an air of ferocity. Their dress is a preparation for battle.

XXXIX. The Semnones are ambitious to be thought the most ancient and respectable of the Suevian nation. Their claim they think confirmed by the mysteries of religion. On a stated day a procession is made into a wood consecrated in ancient times, and rendered awful by auguries delivered down from age to age. The several tribes of the same descent appear by their deputies. The rites begin with the slaughter of a man, who is offered as a victim, and thus their barbarous worship is celebrated by an act of horror. The grove is beheld with superstitious terror. No man enters that holy sanctuary without being bound with a chain, thereby

denoting his humble sense of his own condition, and the superior attributes of the deity that fills the place. Should he happen to fall, he does not presume to rise, but in that grovelling state makes his way out of the wood. The doctrine intended by this bigotry is, that from this spot the whole nation derives its origin, and that here is the sacred mansion of the all-ruling mind, the supreme God of the universe, who holds everything else in a chain of dependence on his will and pleasure. To these tenets much credit arises from the weight and influence of the Semnones, a populous nation, distributed into a hundred cantons, and by the vast extent of their territory entitled to consider themselves as the head of the Suevian nation.

XL. The Langobards exhibit a contrast to the people last described. Their dignity is derived from the paucity of their numbers. Surrounded as they are by great and powerful nations, they live independent, owing their security not to mean compliances, but to that warlike spirit with which they encounter danger. To these succeed in regular order the Reudignians, the Aviones, Angles, and Varinians: the Eudocians, Nuithones, and Suardonians, all defended by rivers, or embosomed in forests. In these several tribes there is nothing that merits attention, except that they all agree to worship the goddess Earth, or as they call her Herth, whom they consider as the common mother of all. This divinity, according to their notion, interposes in human affairs, and, at times, visits the several nations of the globe. A sacred grove on an island in the Northern Ocean is dedicated to her. There stands her sacred chariot, covered with a vestment, to be touched by the priest only. When she takes her seat in this holy vehicle, he becomes immediately conscious of her presence, and in his fit of enthusiasm pursues her progress. The chariot is drawn by cows yoked together. A general festival takes place, and public rejoicings are heard, wherever the goddess directs her way. No war is thought of; arms are laid aside, and the sword is sheathed. The sweets of peace are known, and then only relished. At length the same priest declares the goddess satisfied with her visitation, and re-conducts her to her sanctuary. The chariot with the sacred mantle, and, if we may believe report, the goddess herself, are purified in a secret lake. In this ablution certain slaves officiate, and instantly perish in the water. Hence the terrors of superstition are more widely diffused; a religious horror seizes every mind, and all are content in pious ignorance to venerate that awful mystery, which no man can see and live. This part of the Suevian

nation stretches away to the most remote and unknown recesses of Germany.

XLI. On the banks of the Danube (for we shall now pursue that river, in the same manner as we have traced the course of the Rhine), the first and nearest state is that of the Hermundurians, a people in alliance with Rome, acting always with fidelity, and for that reason allowed to trade not only on the frontier, but even within the limits of the empire. They are seen at large in the heart of our splendid colony in the province of Rhætia, without so much as a guard to watch their motions. To the rest of the Germans we display camps and legions, but to the Hermundurians we grant the exclusive privilege of seeing our houses and our elegant villas. They behold the splendour of the Romans, but without avarice, or a wish to enjoy it. In the territories of these people the Elbe takes its rise, a celebrated river, and formerly well known to the Romans. At present we only hear of its name.

XLII. Contiguous to the last-mentioned people lies the country of the Nariscans, and next in order the Marcomannians and the Quadians. Of these the Marcomannians are the most eminent for their strength and military glory. The very territory now in their possession is the reward of valour, acquired by the expulsion of the Boians. Nor have the Nariscans or Quadians degenerated from their ancestors. As far as Germany is washed by the Danube, these three nations extend along the banks, and from the frontier of the country. The Marcomannians and the Quadians, within our own memory, obeyed a race of kings, born among themselves, the illustrious issue of Maroboduus and of Tudrus. Foreign princes at present sway the sceptre; but the strength of their monarchy depends upon the countenance and protection of Rome. To our arms they are not often indebted: we choose rather to supply them with money.

XLIII. At the back of the Marcomannians and Quadians lie several nations of considerable force, such as the Marsignians, the Gothinians, the Osians, and the Burians. In dress and language the two last resemble the Suevians. The Gothinians, by their use of the Gallic tongue, and the Osians by the dialect of Pannonia, are evidently not of German origin. A further proof arises from their submitting to the disgrace of paying tribute, imposed upon them as aliens and intruders, partly by the Sarmatians, and partly by the Quadians. The Gothinians have still more reason to blush; they submit to the drudgery of digging iron in mines. But a small part of the open and level country is occupied by these several

nations: they dwell chiefly in forests, or on the summit of that continued ridge of mountains, by which Suevia is divided and separated from other tribes that lie still more remote. Of these the Lygians are the most powerful, stretching to a great extent, and giving their name to a number of subordinate communities. It will suffice to mention the most considerable; namely, the Arians, the Helvecones, the Manimians, the Elysians, and Naharvalians. The last show a grove famous for the antiquity of its religious rites. The priest appears in a female dress. The gods whom they worship are, in the language of the country, known by the name of Alcis, by Roman interpreters said to be Castor and Pollux. There are, indeed, no idols in their country; no symbolic representation; no traces of foreign superstition. And yet their two deities are adored in the character of young men and brothers. The Arians are not only superior to the other tribes above mentioned, but are also more fierce and savage. Not content with their natural ferocity, they study to make themselves still more grim and horrible by every addition that art can devise. Their shields are black; their bodies painted of a deep colour: and the darkest night is their time for rushing to battle. The sudden surprise and funereal gloom of such a band of sable warriors are sure to strike a panic through the adverse army, who fly the field, as if a legion of demons had broke loose to attack them; so true it is, that in every engagement the eye is first conquered. Beyond the Lygians the next state is that of the Gothones, who live under regal government, and are, by consequence, ruled with a degree of power more rigorous than other parts of Germany, yet not unlimited, nor entirely hostile to civil liberty. In the neighbourhood of these people, we find, on the sea-coast, the Rugians and Lemovians, both subject to royal authority. When their round shields and short swords are mentioned, there are no other particulars worthy of notice.

XLIV. The people that next occur are the Suiones, who may be said to inhabit the ocean itself. In addition to the strength of their armies, they have a powerful naval force. The form of their ships is peculiar. Every vessel has a prow at each end, and by that contrivance is always ready to make head either way. Sails are not in use, nor is there a range of oars at the sides. The mariners, as often happens in the navigation of rivers, take different stations, and shift from one place to another, as the exigence may require. Riches are by this people held in great esteem; and the public mind, debased by that passion, yields to the govern-

ment of one with unconditional, with passive obedience. Despotism is here fully established. The people are not allowed to carry arms in common, like the rest of the German nations. An officer is appointed to keep in a magazine all the military weapons, and for this purpose a slave is always chosen. For this policy the ostensible reason is, that the ocean is their natural fence against foreign invasions, and in time of peace the giddy multitude, with arms ready at hand, soon proceeds from luxury to tumult and commotion. But the truth is, the jealousy of a despotic prince does not think it safe to commit the care of his arsenal to the nobles or the men of ingenuous birth. Even a manumitted slave is not fit to be trusted.

XLV. At the further extremity beyond the Suiones there is another sea, whose sluggish waters seem to be in a state of stagnation. By this lazy element the globe is said to be encircled, and the supposition receives some colour of probability from an extraordinary phenomenon well known in those regions. The rays of the setting sun continue till the return of day to brighten the hemisphere with so clear a light, that the stars are imperceptible. To this it is added by vulgar credulity, that when the sun begins to rise, the sound of the emerging luminary is distinctly heard, and the very form of the horses, the blaze of glory round the head of the god, is palpable to the sight. The boundaries of nature, it is generally believed, terminate here.

On the coast to the right of the Suevian ocean, the Æstyans have fixed their habitation. In their dress and manners they resemble the Suevians, but their language has more affinity to the dialect of Britain. They worship the mother of the gods. The figure of a wild boar is the symbol of their superstition; and he, who has that emblem about him, thinks himself secure even in the thickest ranks of the enemy, without any need of arms, or any other mode of defence. The use of iron is unknown, and their general weapon is a club. In the cultivation of corn, and other fruits of the earth, they labour with more patience than is consistent with the natural laziness of the Germans. Their industry is exerted in another instance: they explore the sea for amber, in their language called GLESE, and are the only people who gather that curious substance. It is generally found among the shallows; sometimes on the shore. Concerning the nature or the causes of this concretion, the Barbarians, with their usual want of curiosity, make no inquiry. Amongst other superfluities discharged by the sea, this substance lay long neglected, till Roman luxury gave it a

name, and brought it into request. To the savages it is of no use. They gather it in rude heaps, and offer it to sale without any form or polish, wondering at the price they receive for it. Beyond the Suiones, we next find the nation of Sitones, differing in nothing from the former, except the tameness with which they suffer a woman to reign over them. Of this people, it is not enough to say, that they have degenerated from civil liberty; they are sunk below slavery itself. At this place ends the territory of the Suevians.

XLVI. Whether the Peucinians, the Venedians, and Fennians, are to be accounted Germans, or classed with the people of Sarmatia is a point not easy to be determined: though the Peucinians, called by some the Bastarnians, bear a strong resemblance to the Germans. They use the same language: their dress and habitations are the same, and they are equally inured to sloth and filth. Of late, however, in consequence of frequent intermarriages between their leading chieftains and the families of Sarmatia, they have been tainted with the manners of that country. The Venedians are a counterpart of the Sarmatians: like them they lead a wandering life, and support themselve by plunder amidst the woods and mountains that separate the Peucinians and the Fennians. They are, notwithstanding, to be ascribed to Germany, inasmuch as they have settled habitations, know the use of shields, and travel always on foot, remarkable for their swiftness. The Sarmatians, on the contrary, live altogether on horseback or in waggons. Nothing can equal the ferocity of the Fennians, nor is there anything so disgusting as their filth and poverty. Without arms, without horses, and without a fixed place of abode, they lead a vagrant life; their food the common herbage; the skins of beasts their only clothing; and the bare earth their resting-place. For their chief support they depend on their arrows, to which, for want of iron, they prefix a pointed bone. The women follow the chase in company with the men, and claim their share of the prey. To protect their infants from the fury of wild beasts, and the inclemency of the weather, they make a kind of cradle amidst the branches of trees interwoven together, and they know no other expedient. The youth of the country have the same habitation, and amidst the trees old age is rocked to rest. Savage as this way of life may seem, they prefer it to the drudgery of the field, the labour of building, and the painful vicissitudes of hope and fear, which always attend the defence and the acquisition of property. Secure against the passions of men, and fearing nothing from the anger of the gods,

they have attained that uncommon state of felicity, in which there is no craving left to form a single wish.

The rest of what I have been able to collect is too much involved in fable, of a colour with the accounts of the Hellusians and the Oxionians, of whom we are told, that they have the human face, with the limbs and bodies of wild beasts. But reports of this kind, unsupported by proof, I shall leave to the pen of others.

Chapter VI

NJALS SAGA[1]

[*Principal Characters* (in the order of their appearance)

Mord (Fiddle), lawyer.
Unna, daughter of Mord.
Hauskuld, brother of Hrut.
Hrut.
Hallgerda, daughter of Hauskuld.
Glum, son of Olof the Halt.
Thiostolf, foster-father of Hallgerda.
Gunnar, kinsman of Unna.
Njal, a great lawyer.
Bergthora, wife of Njal.
Valgard, Wolf Aurpriest, } sons of Jorund the Priest.
Mord, son of Valgard and Unna.
Skarphedinn, Grim, Helgi, } sons of Njal.
Asgrim, Sigfus, } brothers.
Kolskegg, brother of Gunnar.
Thrain, Kettle, Thorkell, Mord, Lambi, Sigmund, Sigurd, } sons of Sigfus, and kinsmen of Gunnar.
Thorleik, Olof, } sons of Hauskuld.
Kol, grieve (head workman) of Hallgerda.
Swart, house-carle of Njal.
Brynjolf, kinsman of Hallgerda.
Thord (Freedmanson)
Sigmund, a voyager.
Skiolld, companion of Sigmund.
Gizur, the White, a chief.
Geir, the Priest, a friend of Gizur.
Otkell, of Kirkby.
Thorgeir, son of Otkell.

[1] [This version of Njals Saga is by Sir George Webbe Dasent (b. 1817, d. 1896) and was first published in 1861 (Edinburgh, Edmonston & Douglas, 2 vols.).

The Saga of Njal is one of the Icelandic Sagas. The time of the supposed events is toward the end of the 1100s. But the chronicle was not written down till about a century later. The name of the scribe is unknown. The passages here reprinted begin at p. 1, and continue with omissions to nearly the end of the Saga.]

SKAMKELL, a friend of Otkell.
HALLKELL, brother of Otkell.
HALLBJORN, the White, brother of Otkell.
MALCOLM, a thrall bought by Gunnar from Otkell.
RUNOLF, son of Wolf Aurpriest.
RANNVIEG, mother of Gunnar.
SKAPTI, a lawyer, son of Thorod.
THOROD, a lawyer.
THORGEIR, of Lightwater.
HAUSKULD, Priest of Whiteness, foster-son of Njal.
FLOSI, son of Thord.
HALL, of the Side.
KARI, Solmund's son.
STARKAD, THORGEIR, STEIN, KOLBEIN, EGIL, } brothers of Flosi.
THORSTEIN, nicknamed Broadpaunch, brother of Hall.
THORSTEIN, EGIL, } sons of Hall.
HILDIGUNNA, wife of Hauskuld, Priest of Whiteness.
SNORRI, the Priest.
LJOT, son of Hall.
GLUM, son of Hilldir the Old.
MODOLF, son of Kettle.
THORKEL FOULMOUTH.
GUDMUND, the Powerful.
THORIR, son of Helgi.
HJALLTI, son of Skeggi.
THORHALL, son of Asgrim, a lawyer.
THORLEIF CROW, THORGEIR CRAGGEIR, THORGRIM, the Big, } brothers.
KOL, son of Thorstein Broadpaunch.
EYJOLF, a lawyer.
BJARNI, son of Broddhelgi.
HALLBJORN, the Strong.]

1. OF FIDDLE MORD

There was a man named Mord whose surname was Fiddle; he was the son of Sigvat the Red, and he dwelt at the "Vale" in the Rangrivervales. He was a mighty chief, and a great taker up of suits, and so great a lawyer that no judgments were thought lawful unless he had a hand in them. He had an only daughter, named Unna. She was a fair, courteous, and gifted woman, and that was thought the best match in all the Rangrivervales.

Now the story turns westward to the Broadfirth dales, where, at Hauskuldstede, in Laxriverdale, dwelt a man named Hauskuld, who was Dalakoll's son, and his mother's name was Thorgerda. He had a brother named Hrut, who dwelt at Hrutstede; he was of the same mother as Hauskuld, but his father's name was Heriolf. Hrut was handsome, tall and strong, well skilled in arms, and mild of temper; he was one of the wisest of men — stern towards his foes, but a good counsellor on great matters.

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2. HRUT WOOS UNNA

It happened once that those brothers, Hauskuld and Hrut, rode to the Althing, and there was much people at it. Then Hauskuld said to Hrut, "One thing I wish, brother, and that is, that thou wouldst better thy lot and woo thyself a wife."

Hrut answered, "That has been long on my mind, though there always seemed to be two sides to the matter; but now I will do as thou wishest; whither shall we turn our eyes?"

Hauskuld answered, "Here now are many chiefs at the Thing, and there is plenty of choice, but I have already set my eyes on a spot where a match lies made to thy hand. The woman's name is Unna, and she is a daughter of Fiddle Mord, one of the wisest of men. He is here at the Thing and his daughter too, and thou mayst see her if it pleases thee."

Now the next day, when men were going to the High Court, they saw some well-dressed women standing outside the booths of the men from the Rangrivervales. Then Hauskuld said to Hrut, "Yonder now is Unna, of whom I spoke; what thinkest thou of her?"

"Well," answered Hrut; "but yet I do not know whether we should get on well together."

After that they went to the High Court, where Fiddle Mord was laying down the law as was his wont, and after he had done he went home to his booth.

Then Hauskuld and Hrut rose, and went to Mord's booth. They went in and found Mord sitting in the innermost part of the booth, and they bade him "Good-day." He rose to meet them, and took Hauskuld by the hand and made him sit down by his side, and Hrut sat next to Hauskuld. So after they had talked much of this and that, at last Hauskuld said, "I have a bargain to speak to thee about; Hrut wishes to become thy son-in-law, and buy thy daughter, and I, for my part, will not be sparing in the matter."

Mord answered, "I know that thou art a great chief, but thy brother is unknown to me."

"He is a better man than I," answered Hauskuld.

"Thou wilt need to lay down a large sum with him, for she is heir to all I leave behind me," said Mord.

"There is no need," said Hauskuld, "to wait long before thou hearest what I give my word he shall have. He shall have Kam-

ness and Hrutstede, up as far as Thrandargil, and a trading-ship beside, now on her voyage."

Then said Hrut to Mord, "Bear in mind, now, husband, that my brother has praised me much more than I deserve for love's sake; but if after what thou hast heard, thou wilt make the match, I am willing to let thee lay down the terms thyself."

Mord answered, "I have thought over the terms; she shall have sixty hundreds down, and this sum shall be increased by a third more in thine house, but if ye two have heirs, ye shall go halves in the goods."

Then said Hrut, "I agree to these terms, and now let us take witness." After that they stood up and shook hands, and Mord betrothed his daughter Unna to Hrut, and the bridal feast was to be at Mord's house, half a month after Midsummer.

Now both sides ride home from the Thing, and Hauskuld and Hrut ride westward by Hallbjorn's beacon. Then Thiostolf, the son of Bjorn Gullbera of Reykriverdale, rode to meet them, and told them how a ship had come out from Norway to the White River, and how aboard of her was Auzur, Hrut's father's brother, and he wished Hrut to come to him as soon as ever he could. When Hrut heard this, he asked Hauskuld to go with him to the ship, so Hauskuld went with his brother, and when they reached the ship, Hrut gave his kinsman Auzur a kind and hearty welcome. Auzur asked them into his booth to drink, so their horses were unsaddled, and they went in and drank, and while they were drinking, Hrut said to Auzur, "Now kinsman, thou must ride west with me, and stay with me this winter."

"That cannot be, kinsman, for I have to tell thee the death of thy brother Eyvind, and he has left thee his heir at the Gula Thing, and now thy foes will seize thy heritage, unless thou comest to claim it."

"What's to be done now, brother?" said Hrut to Hauskuld, "for this seems a hard matter, coming just as I have fixed my bridal day."

"Thou must ride south," said Hauskuld, "and see Mord, and ask him to change the bargain which ye two have made, and to let his daughter sit for thee three winters as thy betrothed, but I will ride home and bring down thy wares to the ship."

Then said Hrut, "My wish is that thou shouldest take meal and timber, and whatever else thou needest out of the lading." So Hrut had his horses brought out, and he rode south, while Hauskuld rode home west. Hrut came east to the Rangrivervales

to Mord, and had a good welcome, and he told Mord all his business and asked his advice what he should do.

"How much money is this heritage," asked Mord, and Hrut said it would come to a hundred marks, if he got it all.

"Well," said Mord, "that is much when set against what I shall leave behind me, and thou shalt go for it, if thou wilt."

After that they broke their bargain, and Unna was to sit waiting for Hrut three years as his betrothed. Now Hrut rides back to the ship, and stays by her during the summer, till she was ready to sail, and Hauskuld brought down all Hrut's wares and money to the ship, and Hrut placed all his other property in Hauskuld's hands to keep for him while he was away. Then Hauskuld rode home to his house, and a little while after they got a fair wind and sail away to sea. . . .

3. HRUT SAILS TO NORWAY TO CLAIM HIS HERITAGE

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4. OF HRUT'S CRUISE

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5. HRUT RECOVERS HIS INHERITANCE

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6. HRUT RETURNS TO ICELAND

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As soon as the ship was made fast to the land, Hrut rode west home, but Auzur stayed by the ship to unload her, and lay her up. Hrut rode straight to Hauskuldstede, and Hauskuld gave him a hearty welcome, and Hrut told him all about his travels. After that they send men east across the rivers to tell Fiddle Mord to make ready for the bridal feast; but the two brothers rode to the ship, and on the way Hauskuld told Hrut how his money-matters stood, and his goods had gained much since he was away. Then Hrut said, "The reward is less worth than it ought to be, but I will give thee as much meal as thou needst for thy household next winter."

Then they drew the ship on land on rollers, and made her snug in her shed, but all the wares on board her they carried away into

the Dales westward. Hrut stayed at home at Hrutstede till winter was six weeks off, and then the brothers made ready, and Auzur with them, to ride to Hrut's wedding. Sixty men ride with them, and they rode east till they came to Rangriver plains. There they found a crowd of guests, and the men took their seats on benches down the length of the hall, but the women were seated on the cross-benches on the dais, and the bride was rather downcast. So they drank out the feast and it went off well. Mord pays down his daughter's portion, and she rides west with her husband and his train. So they ride till they reach home. Hrut gave over everything into her hands inside the house, and all were pleased at that; but for all that she and Hrut did not pull well together as man and wife, and so things went on till spring, and when spring came Hrut had a journey to make to the Westfirths, to get in the money for which he had sold his wares; but before he set off his wife says to him, "Dost thou mean to be back before men ride to the Thing?"

"Why dost thou ask?" said Hrut.

"I will ride to the Thing," she said, "to meet my father."

"So it shall be," said he, "and I will ride to the Thing along with thee."

"Well and good," she says.

After that Hrut rode from home west to the Firths, got in all his money, and laid it out anew, and rode home again. When he came home he busked him to ride to the Thing, and made all his neighbours ride with him. His brother Hauskuld rode among the rest. Then Hrut said to his wife, "If thou hast as much mind now to go to the Thing as thou saidst a while ago, busk thyself and ride along with me."

She was not slow in getting herself ready, and then they all rode to the Thing. Unna went to her father's booth, and he gave her a hearty welcome, but she seemed somewhat heavy-hearted, and when he saw that he said to her, "I have seen thee with a merrier face. Hast thou anything on thy mind?"

She began to weep, and answered nothing. Then he said to her again. "Why didst thou ride to the Thing, if thou wilt not tell me thy secret? Dost thou dislike living away there in the west?"

Then she answered him, "I would give all I own in the world that I had never gone thither."

"Well!" said Mord, "I'll soon get to the bottom of this." Then he sends men to fetch Hauskuld and Hrut, and they came straightway; and when they came in to see Mord, he rose up to

meet them and gave them a hearty welcome, and asked them to sit down. Then they talked a long time in a friendly way, and at last Mord said to Hauskuld, "Why does my daughter think so ill of life in the west yonder?"

"Let her speak out," said Hrut, "if she has anything to lay to my charge."

But she brought no charge against him. Then Hrut made them ask his neighbours and household how he treated her, and all bore him good witness, saying that she did just as she pleased in the house.

Then Mord said, "Home thou shalt go, and be content with thy lot; for all the witness goes better for him than for thee."

After that Hrut rode home from the Thing, and his wife with him, and all went smoothly between them that summer; but when spring came it was the old story over again, and things grew worse and worse as the spring went on. Hrut had again a journey to make west to the Firths, and gave out that he would not ride to the Althing, but Unna his wife said little about it. So Hrut went away west to the Firths.

7. UNNA SEPARATES FROM HRUT

Now the time for the Thing was coming on. Unna spoke to Sigmund, Auzur's son, and asked if he would ride to the Thing with her; he said he could not ride if his kinsman Hrut set his face against it.

"Well!" says she, "I spoke to thee because I have better right to ask this from thee than from any one else."

He answered, "I will make a bargain with thee: thou must promise to ride back west with me, and to have no underhand dealings against Hrut or myself."

So she promised that, and then they rode to the Thing. Her father Mord was at the Thing, and was very glad to see her, and asked her to stay in his booth while the Thing lasted, and she did so.

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"Now, tell me all that is between you two, and don't make more of the matter than it is worth."

"So it shall be," she answered, and sang two songs, in which she revealed the cause of their misunderstanding. . . .

"Thou didst right to tell me all this," said Mord, "and now I

will give thee a piece of advice, which will stand thee in good stead, if thou canst carry it out to the letter. First of all, thou must ride home from the Thing, and by that time thy husband will have come back, and will be glad to see thee; thou must be blithe and buxom to him, and he will think a good change has come over thee, and thou must show no signs of coldness or ill-temper, but when spring comes thou must sham sickness, and take to thy bed. Hrut will not lose time in guessing what thy sickness can be, nor will he scold thee at all, but he will rather beg every one to take all the care they can of thee. After that he will set off west to the Firths, and Sigmund with him, for he will have to flit all his goods home from the Firths west, and he will be away till the summer is far spent. But when men ride to the Thing, and after all have ridden from the Dales that mean to ride thither; then thou must rise from thy bed and summon men to go along with thee to the Thing; and when thou art 'all-boun,' then shalt thou go to thy bed, and the men with thee who are to bear thee company, and thou shalt take witness before thy husband's bed, and declare thyself separated from him by such a lawful separation as may hold good according to the judgment of the Great Thing, and the laws of the land; and at the man's door [the main door of the house,] thou shalt take the same witness. After that ride away, and ride over Laxriverdale Heath, and so on over Holtbeacon Heath; for they will look for thee by way of Hrutfirth. And so ride on till thou comest to me; then I will see after the matter. But into his hands thou shalt never come more."

Now she rides home from the Thing, and Hrut had come back before her, and made her hearty welcome. She answered him kindly, and was blithe and forbearing towards him. So they lived happily together that half-year; but when spring came she fell sick, and kept her bed. Hrut set off west to the Firths, and bade them tend her well before he went. Now, when the time for the Thing comes, she busked herself to ride away, and did in every way as had been laid down for her; and then she rides away to the Thing. The country folk looked for her, but could not find her. Mord made his daughter welcome, and asked her if she had followed his advice; and she says, "I have not broken one tittle of it."

Then she went to the Hill of Laws, and declared herself separated from Hrut; and men thought this strange news. Unna went home with her father, and never went west from that day forward.

8. MORD CLAIMS HIS GOODS FROM HRUT

Hrut came home, and knit his brows when he heard his wife was gone, but yet kept his feelings well in hand, and stayed at home all that half-year, and spoke to no one on the matter. Next summer he rode to the Thing, with his brother Hauskuld, and they had a great following. But when he came to the Thing, he asked whether Fiddle Mord were at the Thing, and they told him he was; and all thought they would come to words at once about their matter, but it was not so. At last, one day when the brothers and others who were at the Thing went to the Hill of Laws, Mord took witness and declared that he had a money-suit against Hrut for his daughter's dower, and reckoned the amount at ninety hundreds in goods, calling on Hrut at the same time to pay and hand it over to him, and asking for a fine of three marks. He laid the suit in the Quarter Court, into which it would come by law, and gave lawful notice, so that all who stood on the Hill of Laws might hear.

But when he had thus spoken, Hrut said, "Thou hast undertaken this suit, which belongs to thy daughter, rather for the greed of gain and love of strife than in kindliness and manliness. But I shall have something to say against it; for the goods which belong to me are not yet in thy hands. Now, what I have to say is this, and I say it out, so that all who hear me on this hill may bear witness: I challenge thee to fight on the island; there on one side shall be laid all thy daughter's dower, and on the other I will lay down goods worth as much, and whoever wins the day shall have both dower and goods; but if thou wilt not fight with me, then thou shalt give up all claim to these goods."

Then Mord held his peace, and took counsel with his friends about going to fight on the island, and Jorund the priest gave him an answer.

"There is no need for thee to come to ask us for counsel in this matter, for thou knowest if thou fightest with Hrut thou wilt lose both life and goods. He has a good cause, and is besides mighty in himself and one of the boldest of men."

Then Mord spoke out, that he would not fight with Hrut, and there arose a great shout and hooting on the hill, and Mord got the greatest shame by his suit.

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9. THORWALD GETS HALLGERDA TO WIFE

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10. HALLGERDA'S WEDDING

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11. HALLGERDA INSTIGATES THORWALD'S SLAYING BY THIOSTOLF

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12. THIOSTOLF'S FLIGHT

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13. GLUM'S WOOING OF HALLGERDA

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14. WEDDING OF GLUM AND HALLGERDA

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15. THIOSTOLF GOES TO GLUM'S HOUSE

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17. GLUM'S SLAYING BY THIOSTOLF. HRUT KILLS THIOSTOLF

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18. FIDDLE MORD'S DEATH

Now it must be told how Fiddle Mord took a sickness and breathed his last; and that was thought great scathe. His daughter Unna took all the goods he left behind him. She was then still unmarried the second time. She was very lavish, and unthrifty of her property; so that her goods and ready money wasted away, and at last she had scarce anything left but land and stock.

19. GUNNAR COMES INTO THE STORY

There was a man whose name was Gunnar. He was one of Unna's kinsmen, and his mother's name was Rannveig. Gunnar's father was named Hamond. Gunnar, Hamond's son, dwelt at Lithend, in the Fleetlithe. He was a tall man in growth, and a strong man — best skilled in arms of all men.

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20. OF NJAL AND HIS CHILDREN

There was a man whose name was Njal. He was the son of Thorgeir Gelling, the son of Thorolf. Njal's mother's name was Asgerda. Njal dwelt at Bergthorsknoll in the land-isles; he had another homestead on Thorolfsfell. Njal was wealthy in goods, and handsome of face; no beard grew on his chin. He was so great a lawyer, that his match was not to be found. Wise too he was, and foreknowing and foresighted.[1] Of good counsel, and ready to give it, and all that he advised men was sure to be the best for them to do. Gentle and generous, he unravelled every man's knotty points who came to see him about them. Bergthora was his wife's name, she was Skarphedinn's daughter, a very high-spirited, brave-hearted woman, but somewhat hard-tempered. They had six children, three daughters and three sons, and they all come afterwards into this story.

21. UNNA GOES TO SEE GUNNAR

Now it must be told how Unna had lost all her ready money. She made her way to Lithend, and Gunnar greeted his kinswoman well. She stayed there that night, and the next morning they sat out of doors and talked. The end of their talk was, that she told him how heavily she was pressed for money.

"This is a bad business," he said.

"What help wilt thou give me out of my distress?" she asked.

He answered, "Take as much money as thou needest from what I have out at interest."

"Nay," she said, "I will not waste thy goods."

"What then dost thou wish?"

"I wish thee to get back my goods out of Hrut's hands," she answered.

"That, methinks, is not likely," said he, "when thy father could not get them back, and yet he was a great lawyer, but I know little about law."

She answered, "Hrut pushed that matter through rather by boldness than by law; besides, my father was old, and that was why men thought it better not to drive things to the uttermost. And now there is none of my kinsmen to take this suit up if thou hast not daring enough."

[1] This means that Njal was one of those gifted beings who, according to the firm belief of that age, had a more than human insight into things about to happen. It answers very nearly to the Scottish "second sight."

"I have courage enough," he replied, "to get these goods back; but I do not know how to take the suit up."

"Well!" she answered, "go and see Njal of Bergthorsknoll, he will know how to give thee advice. Besides, he is a great friend of thine."

"'Tis like enough he will give me good advice, as he gives it to every one else," says Gunnar.

So the end of their talk was, that Gunnar undertook her cause, and gave her the money she needed for her housekeeping, and after that she went home.

Now Gunnar rides to see Njal, and he made him welcome, and they began to talk at once.

Then Gunnar said, "I am come to seek a bit of good advice from thee."

Njal replied, "Many of my friends are worthy of this, but still I think I would take more pains for none than for thee."

Gunnar said, "I wish to let thee know that I have undertaken to get Unna's goods back from Hrut."

"A very hard suit to undertake," said Njal, "and one very hazardous how it will go; but still I will get it up for thee in the way I think likeliest to succeed, and the end will be good if thou breakest none of the rules I lay down; if thou dost, thy life is in danger."

"Never fear; I will break none of them," said Gunnar.

Then Njal held his peace for a little while, and after that he spoke as follows: —

22. NJAL'S ADVICE

"I have thought over the suit, and it will do so. Thou shalt ride from home with two men at thy back. Over all thou shalt have a great rough cloak, and under that, a russet kirtle of cheap stuff, and under all, thy good clothes. Thou must take a small axe in thy hand, and each of you must have two horses, one fat, the other lean. Thou shalt carry hardware and smith's work with thee hence, and ye must ride off early to-morrow morning, and when ye are come across Whitewater westwards, mind and slouch thy hat well over thy brows. Then men will ask who is this tall man, and thy mates shall say, 'Here is Huckster Hedinn the Big, a man from Eyjafirth, who is going about with smith's work for sale.' This Hedinn is ill-tempered and a chatterer — a fellow who thinks he alone knows everything. Very often he snatches back his wares, and flies at men if everything is not done as he wishes. So thou shalt ride west to Borgarfirth offering all sorts of

wares for sale, and be sure often to cry off thy bargains, so that it will be noised abroad that Huckster Hedinn is the worst of men to deal with, and that no lies have been told of his bad behaviour. So thou shalt ride to Northwaterdale, and to Hrutfirth, and Laxriverdale, till thou comest to Hauskuldstede. There thou must stay a night, and sit in the lowest place, and hang thy head down. Hauskuld will tell them all not to meddle nor make with Huckster Hedinn, saying he is a rude unfriendly fellow. Next morning thou must be off early and go to the farm nearest Hrutstede. There thou must offer thy goods for sale, praising up all that is worst, and tinkering up the faults. The master of the house will pry about and find out the faults. Thou must snatch the wares away from him, and speak ill to him. He will say, 'twas not to be hoped that thou wouldst behave well to him, when thou behavest ill to every one else.' Then thou shalt fly at him, though it is not thy wont, but mind and spare thy strength, that thou mayest not be found out. Then a man will be sent to Hrutstede to tell Hrut he had best come and part you. He will come at once and ask thee to his house, and thou must accept his offer. Thou shalt greet Hrut and he will answer well. A place will be given thee on the lower bench over against Hrut's high seat. He will ask if thou art from the North, and thou shalt answer that thou art a man of Eyjafirth. He will go on to ask if there are very many famous men there. 'Shabby fellows enough and to spare,' thou must answer. 'Dost thou know Reykiardale and the parts about?' he will ask. To which thou must answer, 'I know all Iceland by heart.'

"'Are there any stout champions left in Reykiardale?' he will ask. 'Thieves and scoundrels,' thou shalt answer. Then Hrut will smile and think it sport to listen. You two will go on to talk of the men in the Eastfirth Quarter, and thou must always find something to say against them. At last your talk will come to Rangrivervale, and then thou must say, there is small choice of men left in those parts since Fiddle Mord died. At the same time sing some stave to please Hrut, for I know thou art a skald. Hrut will ask what makes thee say there is never a man to come in Mord's place? and then thou must answer, that he was so wise a man and so good a taker up of suits, that he never made a false step in upholding his leadership. He will ask, 'Dost thou know how matters fared between me and him?'

"'I know all about it,' thou must reply, 'he took thy wife from thee, and thou hadst not a word to say.'

"Then Hrut will ask, 'Dost thou not think it was some disgrace to him when he could not get back his goods, though he set the suit on foot?'

"'I can answer thee that well enough,' thou must say. 'Thou challengedst him to single combat; but he was old, and so his friends advised him not to fight with thee, and then they let the suit fall to the ground.'

"'True enough,' Hrut will say. 'I said so, and that passed for law among foolish men; but the suit might have been taken up again at another Thing if he had the heart.'

"'I know all that,' thou must say.

"Then he will ask, 'Dost thou know anything about law?'

"'Up in the North I am thought to know something about it,' thou shalt say. 'But still I should like thee to tell me how this suit should be taken up.'

"'What suit dost thou mean?' he will ask.

"'A suit,' thou must answer, 'which does not concern me. I want to know how a man must set to work who wishes to get back Unna's dower.'

"Then Hrut will say, 'In this suit I must be summoned so that I can hear the summons, or I must be summoned here in my lawful house.'

"'Recite the summons, then,' thou must say, 'and I will say it after thee.'

"Then Hrut will summon himself; and mind and pay great heed to every word he says. After that Hrut will bid thee repeat the summons, and thou must do so, and say it all wrong, so that no more than every other word is right.

"Then Hrut will smile and not mistrust thee, but say that scarce a word is right. Thou must throw the blame on thy companions, and say they put thee out, and then thou must ask him to say the words first, word by word, and to let thee say the words after him. He will give thee leave, and summon himself in the suit, and thou shalt summon after him there and then, and this time say every word right. When it is done, ask Hrut if that were rightly summoned, and he will answer, 'There is no flaw to be found in it.' Then thou shalt say in a loud voice, so that thy companions may hear, 'I summon thee in the suit which Unna, Mord's daughter, has made over to me with her plighted hand.'

"But when men are sound asleep, you shall rise and take your bridles and saddles, and tread softly, and go out of the house, and put your saddles on your fat horses in the fields, and so ride

off on them, but leave the others behind you. You must ride up into the hills away from the home pastures and stay there three nights, for about so long will they seek you. After that ride home south, riding always by night and resting by day. As for us, we will then ride this summer to the Thing, and help thee in thy suit." So Gunnar thanked Njal, and first of all rode home.

23. HUCKSTER HEDINN

Gunnar rode from home two nights afterwards, and two men with him; they rode along until they got on Bluewoodheath and then men on horseback met them and asked who that tall man might be of whom so little was seen. But his companions said it was Huckster Hedinn. Then the others said a worse was not to be looked for behind, when such a man as he went before. Hedinn at once made as though he would have set upon them, but yet each went their way. So Gunnar went on doing everything as Njal had laid it down for him, and when he came to Hauskuldstede he stayed there the night, and thence he went down the dale till he came to the next farm to Hrutstede. There he offered his wares for sale, and Hedinn fell at once upon the farmer. This was told to Hrut, and he sent for Hedinn, and Hedinn went at once to see Hrut, and had a good welcome. Hrut seated him over against himself, and their talk went pretty much as Njal had guessed.

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So they went on, till Hrut, in answer told him how the suit must be taken up, and recited the summons. Hedinn repeated it all wrong, and Hrut burst our laughing, and had no mistrust. Then he said, Hrut must summon once more, and Hrut did so. Then Hedinn repeated the summons a second time, and this time right, and called his companions to witness how he summoned Hrut in a suit which Unna, Mord's daughter, had made over to him with her plighted hand. At night he went to sleep like other men, but as soon as ever Hrut was sound asleep, they took their clothes and arms, and went out and came to their horses, and rode off across the river, and so up along the bank by Hiardarholt till the dale broke off among the hills, and so there they are upon the fells between Laxriverdale and Hawkdale, having got to a spot where no one could find them unless he had fallen on them by chance.

Hauskuld wakes up that night at Hauskuldstede, and roused all his household. "I will tell you my dream," he said. "I thought I saw a great bear go out of this house, and I knew at once

this beast's match was not to be found; two cubs followed him, wishing well to the bear, and they all made for Hrutstede and went into the house there. After that I woke. Now I wish to ask if any of you saw aught about yon tall man."

Then one man answered him, "I saw how a golden fringe and a bit of scarlet cloth peeped out at his arm, and on his right arm he had a ring of gold."

Hauskuld said, "This beast is no man's fetch, but Gunnar's of Lithend, and now methinks I see all about it. Up! let us ride to Hrutstede." And they did so. Hrut lay in his locked bed, and asks who have come there? Hauskuld tells who he is, and asked what guests might be there in the house?

"Only Huckster Hedinn is here," says Hrut.

"A broader man across the back, it will be, I fear," says Hauskuld, "I guess here must have been Gunnar of Lithend."

"Then there has been a pretty trial of cunning," says Hrut.

"What has happened?" says Hauskuld.

"I told him how to take up Unna's suit, and I summoned myself and he summoned after, and now he can use this first step in the suit, and it is right in law."

"There has, indeed, been a great falling off of wit on one side," said Hauskuld, "and Gunnar cannot have planned it all by himself; Njal must be at the bottom of this plot, for there is not his match for wit in all the land."

Now they look for Hedinn, but he is already off and away; after that they gathered folk, and looked for them three days, but could not find them. Gunnar rode south from the fell to Hawkdale and so east of Skard, and north to Holtbeaconheath, and so on until he got home.

24. GUNNAR AND HRUT STRIVE AT THE THING

Gunnar rode to the Althing and Hrut and Hauskuld rode thither too with a very great company. Gunnar pursues his suit, and began by calling on his neighbours to bear witness, but Hrut and his brother had it in their minds to make an onslaught on him, but they mistrusted their strength.

Gunnar next went to the court of the men of Broadfirth, and bade Hrut listen to his oath and declaration of the cause of the suit, and to all the proofs which he was about to bring forward. After that he took his oath, and declared his case. After that he brought forward his witnesses of the summons, along

with his witnesses that the suit had been handed over to him. All this time Njal was not at the court. Now Gunnar pursued his suit till he called on the defendant to reply. Then Hrut took witness, and said the suit was naught, and that there was a flaw in the pleading; he declared that it had broken down because Gunnar had failed to call those three witnesses which ought to have been brought before the court. The first, that which was taken before the marriage-bed, the second, before the man's door, the third, at the Hill of Laws. By this time Njal was come to the court and said the suit and pleading might still be kept alive if they chose to strive in that way.

"No," says Gunnar, "I will not have that; I will do the same to Hrut as he did to Mord my kinsman; or, are those brothers Hrut and Hauskuld so near that they may hear my voice?"

"Hear it we can," says Hrut. "What dost thou wish?"

Gunnar said, "Now all men here present be ear-witnesses, that I challenge thee Hrut to single combat, and we shall fight to-day on the holm, which is here in Oxwater. But if thou wilt not fight with me, then pay up all the money this very day."

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After that Gunnar went away from the court with all his followers. Hrut and Hauskuld went home too, and the suit was never pursued nor defended from that day forth. Hrut said, as soon as he got inside the booth, "This has never happened to me before, that any man has offered me combat and I have shunned it."

"Then thou must mean to fight," says Hauskuld, "but that shall not be if I have my way; for thou comest no nearer to Gunnar than Mord would have come to thee, and we had better both of us pay up the money to Gunnar."

After that the brothers asked the householders of their own country what they would lay down, and they one and all said they would lay down as much as Hrut wished.

"Let us go then," says Hauskuld, "to Gunnar's booth, and pay down the money out of hand." That was told to Gunnar, and he went out into the doorway of the booth, and Hauskuld said, "Now it is thine to take the money."

Gunnar said, "Pay it down, then, for I am ready to take it."

So they paid down the money truly out of hand, and then Hauskuld said, "Enjoy it now, as thou hast gotten it."

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25. UNNA'S SECOND WEDDING TO VALGARD

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29. GUNNAR GOES ABROAD

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32. GUNNAR COMES OUT TO ICELAND

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33. GUNNAR'S WOOING OF HALLGERDA

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34. MARRIAGE OF GUNNAR AND HALLGERDA

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35. THE VISIT TO BERGTHORSKNOLL, THE HOME OF NJAL

HALLGERDA QUARRELS WITH BERGTHORA

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36. KOL, THE GRIEVE OF HALLGERDA, AT HER INSTIGATION SLAYS SWART, THE HOUSE-CARLE OF NJAL. GUNNAR MAKES ATONEMENT TO NJAL. BERGTHORA MEDITATES REVENGE

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37. KOL IS SLAIN BY ATLI BY THE DIRECTION OF BERGTHORA. NJAL RETURNS THE ATONEMENT TO GUNNAR

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38. HALLGERDA INSTIGATES THE KILLING OF ATLI THE THRALL BY BRYNJOLF. GUNNAR AGAIN MAKES ATONEMENT TO NJAL

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39. BERGTHORA CAUSES THE SLAYING OF BRYNJOLF THE UNRULY

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40. GUNNAR AND NJAL MAKE PEACE ABOUT BRYNJOLF'S SLAYING

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41. HALLGERDA PLOTS THE DEATH OF THORD BY SIGMUND

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42. THE SLAYING OF THORD FREEDMANSON

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43. NJAL AND GUNNAR MAKE PEACE FOR THE SLAYING OF THORD

But when the messenger came to the Thing to tell Gunnar of the slaying, then Gunnar said, "This has happened ill, and no tidings could come to my ears which I should think worse; but yet we will now go at once and see Njal. I still hope he may take it well, though he be sorely tried."

So they went to see Njal, and called him to come out and talk to them. He went out at once to meet Gunnar, and they talked, nor were there any more men by at first than Kolskegg.

"Hard tidings have I to tell thee," says Gunnar; "the slaying of Thord Freedmanson, and I wish to offer thee self-doom for the slaying."

Njal held his peace some while, and then said, "That is well offered, and I will take it; but yet it is to be looked for that I shall have blame from my wife or from my sons for that, for it will mislike them much; but still I will run the risk, for I know that I have to deal with a good man and true; nor do I wish that any breach should arise in our friendship on my part."

"Wilt thou let thy sons be by, pray?" says Gunnar.

"I will not," says Njal, "for they will not break the peace which I make, but if they stand by while we make it they will not pull well together with us."

"So it shall be," says Gunnar. "See thou to it alone."

Then they shook one another by the hand, and made peace well and quickly.

Then Njal said, "The award that I make is two hundred in silver, and that thou wilt think much."

"I do not think it too much," says Gunnar, and went home to his booth.

Njal's sons came home, and Skarphedinn asked whence that great sum of money came, which his father held in his hand.

Njal said, "I tell you of your foster-father's Thord's slaying, and we two, Gunnar and I, have now made peace in the matter, and he has paid an atonement for him as for two men."

"Who slew him?" says Skarphedinn.

"Sigmund and Skiolld, but Thrain was standing near too," says Njal.

"They thought they had need of much strength," says Skarphedinn.

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"Yes! when shall the day come when we shall lift our hands?"

"That will not be long off," says Njal, "and then thou shalt not be baulked; but still, methinks, I set great store on your not breaking this peace that I have made."

"Then we will not break it," says Skarphedinn, "but if anything arises between us, then we will bear in mind the old feud."

"Then I will ask you to spare no one," says Njal.

44. SIGMUND MOCKS NJAL AND HIS SONS

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45. THE SLAYING OF SIGMUND AND SKIOLLD BY THE SONS OF NJAL, AND THE ATONEMENT

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46. OF GIZUR THE WHITE AND GEIR THE PRIEST

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47. OF OTKELL IN KIRKBY. HOW HE REFUSES TO SELL HAY AND MEAT TO GUNNAR IN A TIME OF GREAT SCARCITY. GUNNAR BUYS MALCOLM, OTKELL'S THRALL

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48. HOW HALLGERDA MAKES MALCOLM STEAL FROM KIRKBY

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49. GUNNAR DISCOVERS THE THEFT AND OFFERS ATONEMENT TO OTKELL WHO REFUSES IT THROUGH SKAMKELL'S EVIL COUNSEL

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50. OF SKAMKELL'S LYING. OTKELL CAUSES GUNNAR TO BE SUMMONED

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54. THE FIGHT AT RANGRIVER. GUNNAR KILLS OTKELL AND KOLSKEGG KILLS HALLKELL

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55. NJAL'S ADVICE TO GUNNAR

Now those tidings are heard far and wide, and many said that they thought they had not happened before it was likely. Gunnar rode to Bergthorsknoll and told Njal of these deeds.

Njal said, "Thou hast done great things, but thou hast been sorely tried."

"How will it now go henceforth?" says Gunnar.

"Wilt thou that I tell thee what hath not yet come to pass?" asks Njal. "Thou wilt ride to the Thing, and thou wilt abide by my counsel and get the greatest honour from this matter. This will be the beginning of thy manslayings."

"But give me some cunning counsel," says Gunnar.

"I will do that," says Njal, "never slay more than one man in the same stock, and never break the peace which good men and true make between thee and others, and least of all in such a matter as this."

Gunnar said, "I should have thought there was more risk of that with others than with me."

"Like enough," says Njal, "but still thou shalt so think of thy quarrels, that if that should come to pass of which I have warned thee, then thou wilt have but a little while to live; but otherwise, thou wilt come to be an old man."

Gunnar said, "Dost thou know what will be thine own death?"

"I know it," says Njal.

"What?" asks Gunnar.

"That," says Njal, "which all would be the last to think."

After that Gunnar rode home.

A man was sent to Gizur the White and Geir the Priest, for they had the blood-feud after Otkell. Then they had a meeting, and had a talk about what was to be done; and they were of one mind that the quarrel should be followed up at law. Then some one was sought who would take the suit up, but no one was ready to do that.

"It seems to me," says Gizur, "that now there are only two courses, that one of us two undertakes the suit, and then we shall have to draw lots who it shall be, or else the man will be unatoned. We may make up our minds, too, that this will be a heavy suit to touch; Gunnar has many kinsmen and is much beloved; but that one of us who does not draw the lot, shall ride to the Thing and never leave it until the suit comes to an end."

After that they drew lots, and Geir the Priest drew the lot to take up the suit.

A little after, they rode from the west over the river, and came to the spot where the meeting had been by Rangriver, and dug up the bodies, and took witness to the wounds. After that they gave lawful notice and summoned nine neighbours to bear witness in the suit.

They were told that Gunnar was at home with about thirty men; then Geir the Priest asked whether Gizur would ride against him with one hundred men.

"I will not do that," says he, "though the balance of force is great on our side."

After that they rode back home. The news that the suit was set on foot was spread all over the country, and the saying ran that the Thing would be very noisy and stormy.

56. GUNNAR AND GEIR THE PRIEST STRIVE AT THE THING

There was a man named Skapti. He was the son of Thorod. That father and son were great chiefs, and very well skilled in law. Thorod was thought to be rather crafty and guileful. They stood by Gizur the White in every quarrel.

As for the Lithemen and the dwellers by Rangriver, they came in a great body to the Thing. Gunnar was so beloved that all said with one voice that they would back him.

Now they all come to the Thing and fit up their booths. In company with Gizur the White were these chiefs: Skapti, Thorod's son, Asgrim, Ellidagrim's son, Oddi of Kidberg, and Halldor Ornolf's son.

Now one day men went to the Hill of Laws, and then Geir the Priest stood up and gave notice that he had a suit of manslaughter against Gunnar for the slaying of Otkell. Another suit of manslaughter he brought against Gunnar for the slaying of Hallbjorn the White; then, too, he went on in the same way as to the slaying of Audulf, and so, too, as to the slaying of Skamkell. Then, too, he laid a suit of manslaughter against Kolskegg for the slaying of Hallkell.

And when he had given due notice of all his suits of manslaughter it was said that he spoke well. He asked, too, in what Quarter Court the suits lay, and in what house in the district the defendants dwelt. After that men went away from the Hill of Laws, and so the Thing goes on till the day when the courts were to be set to try suits. Then either side gathered their men together in great strength.

Geir the Priest and Gizur the White stood at the court of the men of Rangriver looking north, and Gunnar and Njal stood looking south towards the court.

Geir the Priest bade Gunnar to listen to his oath, and then he took the oath, and afterwards declared his suit.

Then he let men bear witness of the notice given by the suit; then he called upon the neighbours who were to form the inquest to take their seats; then he called on Gunnar to challenge the inquest; and then he called on the inquest to utter their finding. Then the neighbours who were summoned on the inquest went to the court and took witness, and said that there was a bar to their finding in the suit as to Audulf's slaying, because the next of kin who ought to follow it up was in Norway, and so they had nothing to do with that suit.

After that they uttered their finding in the suit as to Otkell, and brought in Gunnar as truly guilty of killing him.

Then Geir the Priest called on Gunnar for his defence, and took witness of all the steps in the suit which had been proved.

Then Gunnar, in his turn, called on Geir the Priest to listen to his oath, and to the defence which he was about to bring forward in the suit. Then he took the oath and said, "This defence I make to this suit, that I took witness and outlawed Otkell before my neighbours for that bloody wound which I got when Otkell gave me a hurt with his spur; but thee, Geir the Priest, I forbid by a lawful protest made before a priest, to pursue this suit, and so, too, I forbid the judges to hear it; and with this I make all the steps hitherto taken in this suit void and of none-effect. I forbid thee

by a lawful protest, a full, fair, and binding protest, as I have a right to forbid thee by the common custom of the Thing and by the law of the land.

"Besides, I will tell thee something else which I mean to do," says Gunnar.

"What!" says Geir, "wilt thou challenge me to the island as thou art wont, and not bear the law?"

"Not that," says Gunnar; "I shall summon thee at the Hill of Laws for that thou calledst those men on the inquest who had no right to deal with Audulf's slaying, and I will declare thee for that guilty of outlawry."

Then Njal said, "Things must not take this turn, for the only end of it will be that this strife will be carried to the uttermost. Each of you, as it seems to me, has much on his side. There are some of these manslaughters, Gunnar, about which thou canst say nothing to hinder the court from finding thee guilty; but thou hast set on foot a suit against Geir, in which he, too, must be found guilty. Thou too, Geir the Priest, shalt know that this suit of outlawry which hangs over thee shall not fall to the ground if thou wilt not listen to my words."

Thorod the Priest said, "It seems to us as though the most peaceful way would be that a settlement and atonement were come to in the suit. But why sayest thou so little, Gizur the White?"

"It seems to me," says Gizur, "as though we shall need to have strong props for our suit; we may see, too, that Gunnar's friends stand near him, and so the best turn for us that things can take will be that good men and true should utter an award on the suit, if Gunnar so wills it."

"I have ever been willing to make matters up," says Gunnar; "and besides, ye have much wrong to follow up, but still I think I was hard driven to do as I did."

And now the end of those suits was, by the counsel of the wisest men, that all the suits were put to arbitration; six men were to make this award, and it was uttered there and then at the Thing.

The award was that Skamkell should be unatoned. The blood money for Otkell's death was to be set off against the hurt Gunnar got from the spur; and as for the rest of the manslaughters, they were paid for after the worth of the men, and Gunnar's kinsmen gave money so that all the fines might be paid up at the Thing.

Then Geir the Priest and Gizur the White went up and gave Gunnar pledges that they would keep the peace in good faith.

Gunnar rode home from the Thing, and thanked men for their

help, and gave gifts to many, and got the greatest honour from the suit.

Now Gunnar sits at home in his honour.

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76. GUNNAR'S SLAYING

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78. GUNNAR OF LITHEND AVENGED

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82. NJAL'S SONS SAIL ABROAD

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89. NJAL'S SONS AND KARI COME OUT TO ICELAND

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90. THE QUARREL OF NJAL'S SONS WITH THRAIN SIGFUS' SON

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91. THRAIN SIGFUS' SON SLAIN BY SKARPHEDINN

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101. OF THORGEIR OF LIGHTWATER

There was a man named Thorgeir who dwelt at Lightwater; he was the son of Tjorfi the son of Thorkel the Long, the son of Kettle Longneck. His mother's name was Thoruna, and she was the daughter of Thorstein, the son of Sigmund, the son of Bard of the Nip. Gudrida was the name of his wife; she was a daughter of Thorkel the Black of Hleidrargarth. His brother was Worm Wallet-back, the father of Hlenni the Old of Saurby.

The Christian men set up their booths, and Gizur the White and Hjallti were in the booths of the men from Mossfell. The day after both sides went to the Hill of Laws, and each, the Christian men as well as the heathen, took witness, and declared themselves out of the other's laws, and then there was such an uproar on Hill of Laws that no man could hear the other's voice.

After that men went away, and all thought things looked like the

greatest entanglement. The Christian men chose as their Speaker, Hall of the Side, but Hall went to Thorgeir, the priest of Lightwater, who was the old Speaker of the law, and gave him three marks of silver [1] to utter what the law should be, but still that was most hazardous counsel, since he was an heathen.

Thorgeir lay all that day on the ground, and spread a cloak over his head, so that no man spoke with him; but the day after men went to the Hill of Laws, and then Thorgeir bade them be silent and listen, and spoke thus: "It seems to me as though our matters were come to a deadlock, if we are not all to have one and the same law; for if there be a sundering of the laws, then there will be a sundering of the peace, and we shall never be able to live in the land. Now, I will ask both Christian men and heathen whether they will hold to those laws which I utter?"

They all said they would.

He said he wished to take an oath of them, and pledges that they would hold to them, and they all said "yea" to that, and so he took pledges from them.

"This is the beginning of our laws," he said, "that all men shall be Christian here in the land, and believe in one God, the Father, the Son, and the Holy Ghost, but leave off all idol-worship, not expose children to perish, and not eat horseflesh. It shall be outlawry if such things are proved openly against any man; but if these things are done by stealth, then it shall be blameless."

But all this heathendom was all done away with within a few years' space, so that those things were not allowed to be done either by stealth or openly.

Thorgeir then uttered the law as to keeping the Lord's day and fast days, Yuletide and Easter, and all the greatest highdays and holidays.

The heathen men thought they had been greatly cheated; but still the true faith was brought into the law, and so all men became Christian here in the land.

After that men fare home from the Thing.

102. THE FIFTH COURT

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Njal sought to get a priesthood and leadership for Hauskuld [his foster-son], but no one was willing to sell his priesthood, and now the summer passes away till the Althing.

[1] This was no bribe, but his lawful fee.

There were great quarrels at the Thing that summer, and many a man then did as was their wont, in faring to see Njal; but he gave such counsel in men's lawsuits as was not thought at all likely, so that both the pleadings and the defence came to naught, and out of that great strife arose, when the lawsuits could not be brought to an end, and men rode home from the Thing unatoned.

Now things go on till another Thing comes. Njal rode to the Thing, and at first all is quiet until Njal says that it is high time for men to give notice of their suits.

Then many said that they thought that came to little, when no man could get his suit settled, even though the witnesses were summoned to the Althing, "and so," say they, "we would rather seek our rights with point and edge."

"So it must not be," says Njal, "for it will never do to have no law in the land. But yet ye have much to say on your side in this matter, and it behoves us who know the law, and who are bound to guide the law, to set men at one again, and to ensure peace. 'Twere good council, then, methinks, that we call together all the chiefs and talk the matter over."

Then they go to the Court of Laws, and Njal spoke and said, "Thee, Skapti, Thorod's son and you other chiefs, I call on, and say, that methinks our lawsuits have come into a deadlock, if we have to follow up our suits in the Quarter Courts, and they get so entangled that they can neither be pleaded nor ended. Methinks, it were wiser if we had a Fifth Court, and there pleaded those suits which cannot be brought to an end in the Quarter Courts."

"How," said Skapti, "wilt thou name a Fifth Court, when the Quarter Court is named for the old priesthoods, three twelves in each quarter?"

"I can see help for that," says Njal, "by setting up new priesthoods, and filling them with the men who are best fitted in each Quarter, and then let those men who are willing to agree to it, declare themselves ready to join the new priest's Thing."

"Well," says Skapti, "we will take this choice; but what weighty suits shall come before the court?"

"These matters shall come before it," says Njal, — "all matters of contempt of the Thing, such as if men bear false witness, or utter a false finding; hither, too, shall come all those suits in which the Judges are divided in opinion in the Quarter Court; then they shall be summoned to the Fifth Court; so, too, if men offer bribes, or take them, for their help in suits. In this court all the oaths shall be of the strongest kind, and two men shall follow every

oath, who shall support on their words of honour what the others swear. So it shall be also, if the pleadings on one side are right in form, and the other wrong, that the judgment shall be given for those that are right in form. Every suit in this court shall be pleaded just as is now done in the Quarter Court, save and except that when four twelves are named in the Fifth Court, then the plaintiff shall name and set aside six men out of the court, and the defendant other six; but if he will not set them aside, then the plaintiff shall name them and set them aside as he has done with his own six; but if the plaintiff does not set them aside, then the suit comes to naught, for three twelves shall utter judgment on all suits. We shall also have this arrangement in the Court of Laws, that those only shall have the right to make or change laws who sit on the middle bench, and to this bench those only shall be chosen who are wisest and best. There, too, shall the Fifth Court sit; but if those who sit in the Court of Laws are not agreed as to what they shall allow or bring in as law, then they shall clear the court for a division, and the majority shall bind the rest; but if any man who has a seat in the Court be outside the Court of Laws and cannot get inside it, or thinks himself overborne in the suit, than he shall forbid them by a protest, so that they can hear it in the Court, and then he has made all their grants and all their decisions void and of none effect, and stopped them by his protest."

After that, Skapti, Thorod's son brought the Fifth Court into the law, and all that was spoken of before. Then men went to the Hill of Laws, and men set up new priesthoods: In the Northlanders' Quarter were these new priesthoods. The priesthood of the Melmen in Midfirth, and the Laufesingers' priesthood in the Eyjafirth.

Then Njal begged for a hearing, and spoke thus: "It is known to many men what passed between my sons and the men of Gritwater when they slew Thrain, Sigfus' son. But for all that we settled the matter; and now I have taken Hauskuld into my house, and planned a marriage for him if he can get a priesthood anywhere; but no man will sell his priesthood, and so I will beg you to give me leave to set up a new priesthood at Whiteness for Hauskuld."

He got this leave from all, and after that he set up the new priesthood for Hauskuld; and he was afterwards called Hauskuld, the Priest of Whiteness.

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106. VALGARD THE GUILEFUL PLOTS TO INVOLVE NJAL'S SONS IN A BLOOD-FEUD BY TALE-BEARING

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108. OF THE SLANDER OF MORD, VALGARD'S SON

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109. OF MORD AND NJAL'S SONS

It happened one day that Mord came to Bergthorsknoll. He and Kari and Njal's sons fell a-talking at once, and Mord slanders Hauskuld after his wont, and has now many new tales to tell, and does naught but egg Sharphedinn and them on to slay Hauskuld, and said he would be beforehand with them if they did not fall on him at once.

"I will let thee have thy way in this," says Skarphedinn, "if thou wilt fare with us, and have some hand in it."

"That I am ready to do," says Mord, and so they bound that fast with promises, and he was to come there that evening.

Bergthora asked Njal, "What are they talking about out of doors?"

"I am not in their counsels," says Njal, "but I was seldom left out of them when their plans were good."

Skarphedinn did not lie down to rest that evening, nor his brothers, nor Kari.

That same night, when it was well-nigh spent, came Mord, Valgard's son, and Njal's sons and Kari took their weapons and rode away. They fared till they came to Ossaby, and bided there by a fence. The weather was good, and the sun just risen.

110. THE SLAYING OF HAUSKULD, THE PRIEST OF WHITENESS

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111. OF HILDIGUNNA AND MORD VALGARD'S SON

Hildigunna woke up and found that Hauskuld was away out of his bed.

"Hard have been my dreams," she said, "and not good; but go and search for *him*, Hauskuld."

So they searched for him about the homestead and found him not.

By that time she had dressed herself; then she goes and two men with her, to the fence, and there they find Hauskuld slain.

Just then, too, came up Mord Valgard's son's shepherd, and told her that Njal's sons had gone down thence, "and," he said, "Skarphedinn called out to me and gave notice of the slaying as done by him."

"It were a manly deed," she says, "if one man had been at it."

She took the cloak and wiped off all the blood with it, and wrapped the gouts of gore up in it, and so folded it together and laid it up in her chest.

Now she sent a man up to Gritwater to tell the tidings thither, but Mord was there before him, and had already told the tidings. There, too, was come Kettle of the Mark.

Thorgerda said to Kettle, "Now is Hauskuld dead as we know, and now bear in mind what thou promisedst to do when thou tookest him for thy fosterchild."

"It may well be," says Kettle, "that I promised very many things then, for I thought not that these days would ever befall us that have now come to pass; but yet I am come into a strait, for 'nose is next of kin to eyes,' since I have Njal's daughter to wife."

"Art thou willing, then," says Thorgerda, "that Mord should give notice of the suit for the slaying?"

"I know not that," says Kettle, "for methinks ill comes from him more often than good."

But as soon as ever Mord began to speak to Kettle he fared the same as others, in that he thought as though Mord would be true to him, and so the end of their counsel was that Mord should give notice of the slaying, and get ready the suit in every way before the Thing.

Then Mord fared down to Ossaby, and thither came nine neighbours who dwelt nearest the spot.

Mord had ten men with him. He shows the neighbours Hauskuld's wounds, and takes witness to the hurts, and names a man as the dealer of every wound save one; that he made as though he knew not who had dealt it, but that wound he had dealt himself. But the slaying he gave notice of at Skarphedinn's hand, and the wounds at his brothers' and Kari's.

After that he called on nine neighbours who dwelt nearest the spot to ride away from home to the Althing on the inquest.

After that he rode home. He scarce ever met Njal's sons, and when he did meet them, he was cross, and that was part of their plan.

The slaying of Hauskuld was heard over all the land, and was ill-spoken of. Njal's sons went to see Asgrim, Ellidagrim's son, and asked him for aid.

"Ye very well know that ye may look that I shall help you in all great suits, but still my heart is heavy about this suit, for there are many who have the blood feud, and this slaying is ill-spoken of over all the land."

Now Njal's sons fare home.

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114. OF FLOSI, THORD'S SON

Flosi hears of Hauskuld's slaying, and that brings him much grief and wrath, but still he kept his feelings well in hand. He was told how the suit had been set on foot, as has been said, for Hauskuld's slaying, and he said little about it. He sent word to Hall of the Side, his father-in-law, and to Ljot his son, that they must gather in a great company at the Thing. Ljot was thought the most hopeful man for a chief away there east. It had been foretold that if he could ride three summers running to the Thing, and come safe and sound home, that then he would be the greatest chief in all his family, and the oldest man. He had then ridden one summer to the Thing, and now he meant to ride the second time.

Flosi sent word to Kol, Thorstein's son, and Glum, the son of Hilldir the Old, the son of Gerleif, the son of Aunund Wallet-back, and to Modolf, Kettle's son, and they all rode to meet Flosi.

Hall gave his word, too, to gather a great company, and Flosi rode till he came to Kirkby, to Surt, Asbjorn's son. Then Flosi sent after Kolbein, Egil's son, his brother's son, and he came to him there. Thence he rode to Headbrink. There dwelt Thorgrim the Showy, the son of Thorkel the Fair. Flosi begged him to ride to the Althing with him, and he said yea to the journey, and spoke thus to Flosi, "Often hast thou been more glad, master, than thou art now, but thou hast some right to be so."

"Of a truth," said Flosi, "that hath now come on my hands, which I would give all my goods that it had never happened. Ill seed has been sown, and so an ill crop will spring from it."

Thence he rode over Arnstacksheath, and so to Solheim that evening. There dwelt Lodmund, Wolf's son, but he was a great friend of Flosi, and there he stayed that night, and next morning Lodmund rode with him into the Dale.

There dwelt Runolf, the son of Wolf Aurpriest.

Flosi said to Runolf, "Here we shall have true stories as to the slaying of Hauskuld, the Priest of Whiteness. Thou art a truthful man, and hast got at the truth by asking, and I will trust to all that thou tellest me as to what was the cause of quarrel between them."

"There is no good in mincing the matter," said Runolf, "but we must say outright that he has been slain for less than no cause; and his death is a great grief to all men. No one thinks it so much a loss as Njal, his foster-father."

"Then they will be ill off for help from men," says Flosi; "and they will find no one to speak up for them."

"So it will be," says Runolf, "unless it be otherwise foredoomed."

"What has been done in the suit?" says Flosi.

"Now the neighbours have been summoned on the inquest," says Runolf, "and due notice given of the suit for manslaughter."

"Who took that step?" asks Flosi.

"Mord, Valgard's son," says Runolf.

"How far is that to be trusted?" says Flosi.

"He is of my kin," says Runolf; "but still if I tell the truth of him, I must say that more men reap ill than good from him. But this one thing I will ask of thee, Flosi, that thou givest rest to thy wrath, and takest the matter up in such a way as may lead to the least trouble. For Njal will make a good offer, and so will others of the best men."

"Ride thou then to the Thing, Runolf," said Flosi, "and thy words shall have much weight with me, unless things turn out worse than they should."

After that they cease speaking about it, and Runolf promised to go to the Thing.

Runolf sent word to Hafr the Wise, his kinsman, and he rode thither at once.

Thence Flosi rode to Ossaby.

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116. OF FLOSI AND MORD AND THE SONS OF SIGFUS

The sons of Sigfus heard how Flosi was at Holtford, and they rode thither to meet him, and there were Kettle of the Mark, and Lambi his brother, Thorkell and Mord, the sons of Sigfus, Sigmund their brother, and Lambi, Sigurd's son, and Gunnar, Lambi's son, and Grani, Gunnar's son, and Vebrand, Hamond's son.

Flosi stood up to meet them, and greeted them gladly. So they went down the river. Flosi had the whole story from them about the slaying, and there was no difference between them and Kettle of the Mark's story.

Flosi spoke to Kettle of the Mark, and said, "This now I ask of thee; how tightly are your hearts knit as to this suit, thou and the other sons of Sigfus?"

"My wish is," said Kettle, "that there should be peace between us, but yet I have sworn an oath not to part from this suit till it has been brought somehow to an end, and to lay my life on it."

"Thou art a good man and true," said Flosi, "and it is well to have such men with one."

Then Grani, Gunnar's son and Lambi, Sigurd's son both spoke together, and said, "We wish for outlawry and death."

"It is not given us," said Flosi, "both to share and choose, we must not take what we can get."

"I have had it in my heart," says Grani, "ever since they slew Thrain by Markfleet, and after that his son Hauskuld, never to be atoned with them by a lasting peace, for I would willingly stand by when they were all slain, every man of them."

"Thou hast stood so near to them," said Flosi, "that thou mightest have avenged these things hadst thou had the heart and manhood. Methinks thou and many others now ask for what ye would give much money hereafter never to have had a share in. I see this clearly, that though we slay Njal or his sons, still they are men of so great worth, and of such good family, that there will be such a blood feud and hue and cry after them, that we shall have to fall on our knees before many a man, and beg for help, ere we get an atonement and find our way out of this strait. Ye may make up your minds, then, that many will become poor who before had great goods, but some of you will lose both goods and life."

Mord, Valgard's son rode to meet Flosi, and said he would ride to the Thing with him with all his men.

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117. NJAL AND SKARPHEDINN TALK TOGETHER

Now, we must say how Njal said to Skarphedinn.

"What plan have ye laid down for yourselves, thou and thy brothers and Kari?"

"Little reck we of dreams in most matters," said Skarphedinn;

"but if thou must know, we shall ride to Tongue to Asgrim, Ellidagrim's son, and thence to the Thing; but what meanest thou to do about thine own journey, father?"

"I shall ride to the Thing," says Njal, "for it belongs to my honour not to be severed from your suit so long as I live. I ween that many men will have good words to say of me, and so I shall stand you in good stead, and do you no harm."

There, too, was Thorhall, Asgrim's son, and Njal's foster-son. The sons of Njal laughed at him because he was clad in a coat of russet, and asked how long he meant to wear that?

"I shall have thrown it off," he said, "when I have to follow up the blood-feud for my foster-father."

"There will ever be most good in thee," said Njal, "when there is most need of it."

So they all busked them to ride away from home, and were nigh thirty men in all, and rode till they came to Thursowater. Then came after them Njal's kinsmen, Thorleif Crow, and Thorgrim the Big; they were Holt-Thorir's sons, and offered their help and following to Njal's sons, and they took that gladly.

So they rode altogether across Thursowater, until they came on Laxwater bank, and took a rest and baited their horses there, and there Hjallti, Skeggi's son came to meet them, and Njal's sons fell to talking with him, and they talked long and low.

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And after that they all rode together till they come up on the Thing-field, and fit up their booths.

118. ASGRIM AND NJAL'S SONS PRAY MEN FOR HELP

By that time Flosi had come to the Thing, and filled all his booths. Runolf filled the Dale-dwellers' booths, and Mord the booths of the men from Rangriver. Hall of the Side had long since come from the east, but scarce any of the other men; but still Hall of the Side had come with a great band, and joined this at once to Flosi's company, and begged him to take an atonement and make peace.

Hall was a wise man and good-hearted. Flosi answered him well in everything, but gave way in nothing.

Hall asked what men had promised him help? Flosi named Mord, Valgard's son, and said he had asked for his daughter at the hand of his kinsman Starkad.

Hall said she was a good match, but it was ill dealing with Mord, "And that thou wilt put to the proof ere this Thing be over."

After that they ceased talking.

One day Njal and Asgrim had a long talk in secret.

Then all at once Asgrim sprang up and said to Njal's sons, "We must set about seeking friends, that we may not be overborne by force; for this suit will be followed up boldly."

Then Asgrim went out, and Helgi, Njal's son next; then Kari, Solmund's son; then Grim, Njal's son; then Skarphedinn; then Thorhall; then Thorgrim the Big; then Thorleif Crow.

They went to the booth of Gizur the White and inside it. Gizur stood up to meet them, and bade them sit down and drink.

"Not thitherward," says Asgrim, "tends our way, and we will speak our errand out loud, and not mutter and mouth about it. What help shall I have from thee, as thou art my kinsman?"

"Jorunn, my sister," said Gizur, "would wish that I should not shrink from standing by thee; and so it shall be now and hereafter, that we will both of us have the same fate."

Asgrim thanked him, and went away afterwards.

Then Skarphedinn asked, "Whither shall we go now?"

"To the booths of the men of Olfus," says Asgrim.

So they went thither, and Asgrim asked whether Skapti, Thorod's son were in the booth? He was told that he was. Then they went inside the booth.

Skapti sate on the cross-bench, and greeted Asgrim, and he took the greeting well.

Skapti offered Asgrim a seat by his side, but Asgrim said he should only stay there a little while, "But still we have an errand to thee."

"Let me hear it?" says Skapti.

"I wish to beg thee for thy help, that thou wilt stand by us in our suit."

"One thing I had hoped," says Skapti, "and that is, that neither you nor your troubles would ever come into my dwelling."

"Such things are ill-spoken," says Asgrim, "when a man is the last to help others, when most lies on his aid."

"Who is yon man," says Skapti, "before whom four men walk, a big burly man, and pale-faced, unlucky-looking, well-knit, and troll-like?"

"My name is Skarphedinn," he answers, "and thou hast often seen me at the Thing; but in this I am wiser than you, that I have no need to ask what thy name is. Thy name is Skapti,

Thorod's son, but before thou calledst thyself 'Bristlepoll,' after thou hadst slain Kettle of Elda; then thou shavedst thy poll, and puttedst pitch on thy head, and then thou hiredst thralls to cut up a sod of turf, and thou creptest underneath it to spend the night. After that thou wentest to Thorolf, Lopt's son of Eyrar, and he took thee on board, and bore thee out here in his meal sacks."

After that Asgrim and his band went out, and Skarphedinn asked, "Whither shall we go now?"

"To Snorri the Priest's booth," says Asgrim.

Then they went to Snorri's booth. There was a man outside before the booth, and Asgrim asked whether Snorri were in the booth.

The man said he was.

Asgrim went into the booth, and all the others. Snorri was sitting on the cross-bench, and Asgrim went and stood before him, and hailed him well.

Snorri took his greeting blithely, and bade him sit down.

Asgrim said he should be only a short time there, "But we have an errand with thee."

Snorri bade him tell it.

"I would," said Asgrim, "that thou wouldst come with me to the court, and stand by me with thy help, for thou art a wise man, and a great man of business."

"Suits fall heavy on us now," says Snorri the Priest, "and now many men push forward against us, and so we are slow to take up the troublesome suits of other men from other quarters."

"Thou mayest stand excused," says Asgrim, "for thou art not in our debt for any service."

"I know," says Snorri, "that thou art a good man and true, and I will promise thee this, that I will not be against thee, and not yield help to thy foes."

Asgrim thanked him, and Snorri the Priest asked, "Who is that man before whom four go, pale-faced, and sharp-featured, and who shows his front teeth, and has his axe aloft on his shoulder?"

"My name is Hedinn," he says, "but some men call me Skarphedinn by my full name; but what more hast thou to say to me?"

"This," said Snorri the Priest, "that methinks thou art a well-knit, ready-handed man, but yet I guess that the best part of thy good fortune is past, and I ween thou hast now not long to live."

"That is well," says Skarphedinn, "for that is a debt we all have to pay, but still it were more needful to avenge thy father than to foretell my fate in this way."

"Many have said that before," says Snorri, "and I will not be angry at such words."

After that they went out, and got no help there. Then they fared to the booths of the men of Skagafirth. There Hafr the Wealthy had his booth. The mother of Hafr was named Thoruna, she was a daughter of Asbjorn Baldpate of Myrka, the son of Hrosbjorn.

Asgrim and his band went into the booth, and Hafr sate in the midst of it, and was talking to a man.

Asgrim went up to him, and hailed him well; he took it kindly, and bade him sit down.

"This I would ask of thee," said Asgrim, "that thou wouldst grant me and my sons-in-law help."

Hafr answered sharp and quick, and said he would have nothing to do with their troubles.

"But still I must ask who that pale-faced man is before whom four men go, so ill-looking, as though he had come out of the sea-crags."

"Never mind, milksop that thou art!" said Skarphedinn, "who I am, for I will dare to go forward wherever thou standest before me, and little would I fear though such striplings were in my path. 'Twere rather thy duty, too, to get back thy sister Swanlauga, whom Eydis Ironsword and his messmate Stediakoll took away out of thy house, but thou didst not dare to do aught against them."

"Let us go out," said Asgrim, "there is no hope of help here."

Then they went out to the booths of men of Modruvale, and asked whether Gudmund the Powerful were in the booth, but they were told he was.

Then they went into the booth. There was a high seat in the midst of it, and there sate Gudmund the Powerful.

Asgrim went and stood before him, and hailed him.

Gudmund took his greeting well, and asked him to sit down.

"I will not sit," said Asgrim, "but I wish to pray thee for help, for thou art a bold man and a mighty chief."

"I will not be against thee," said Gudmund, "but if I see fit to yield thee help, we may well talk of that afterwards," and so he treated them well and kindly in every way.

Asgrim thanked him for his words, and Gudmund said, "There is one man in your band at whom I have gazed for a while, and he seems to me more terrible than most men that I have seen."

"Which is he?" says Asgrim.

"Four go before him," says Gudmund; "dark brown is his hair, and pale is his face; tall of growth and sturdy. So quick and shifty in his manliness that I would rather have his following than that of ten other men; but yet the man is unlucky-looking."

"I know," said Skarphedinn, "that thou speakest at me, but it does not go in the same way as to luck with me and thee. I have blame, indeed, from the slaying of Hauskuld, the Whiteness Priest, as is fair and right; but both Thorkel Foulmouth and Thorir, Helgi's son spread abroad bad stories about thee, and that has tried thy temper very much."

Then they went out, and Skarphedinn said, "Whither shall we go now?"

"To the booths of the men of Lightwater," said Asgrim.

There Thorkel Foulmouth had set up his booth.

Thorkel Foulmouth had been abroad and worked his way to fame in other lands. He had slain a robber east in Jemtland's wood, and then he fared on east into Sweden, and was a messmate of Saurkvir the Churl, and they harried eastward ho; but to the east of Baltic side[1] Thorkel had to fetch water for them one evening; then he met a wild man of the woods,[2] and struggled against him long; but the end of it was that he slew the wild man. Thence he fared east into Adalsyssla, and there he slew a flying fire-drake. After that he fared back to Sweden, and thence to Norway, and so out to Iceland, and let these deeds of derring do be carved over his shut bed, and on the stool before his high seat. He fought, too, on Lightwater way with his brothers against Gudmund the Powerful, and the men of Lightwater won the day. He and Thorir, Helgi's son spread abroad bad stories about Gudmund. Thorkel said there was no man in Iceland with whom he would not fight in single combat, or yield an inch to, if need were. He was called Thorkel Foulmouth, because he spared no one with whom he had to do either in word or deed.

[1] "Baltic side." This probably means a part of the Finnish coast in the Gulf of Bothnia. See "Fornm. Sögur," xii. 264–5.

[2] "Wild man of the woods." In the original Finngálkn, a fabulous monster, half man and half beast.

119. OF SKARPHEDINN AND THORKEL FOULMOUTH

Asgrim and his fellows went to Thorkel Foulmouth's booth, and Asgrim said then to his companions, "This booth Thorkel Foulmouth owns, a great champion, and it were worth much to us to get his help. We must here take heed in everything, for he is self-willed and bad-tempered; and now I will beg thee, Skarphedinn, not to let thyself be led into our talk."

Skarphedinn smiled at that. He was so clad, he had on a blue kirtle and grey breeks, and black shoes on his feet, coming high up his leg; he had a silver belt about him, and that same axe in his hand with which he slew Thrain, and which he called the "ogress of war," a round buckler, and a silken band round his brow, and his hair brushed back behind his ears. He was the most soldier-like of men, and by that all men knew him. He went in his appointed place, and neither before nor behind.

Now they went into the booth and into its inner chamber. Thorkel sate in the middle of the cross-bench, and his men away from him on all sides. Asgrim hailed him, and Thorkel took the greeting well, and Asgrim said to him, "For this have we come hither, to ask help of thee, and that thou wouldst come to the Court with us."

"What need can ye have of my help," said Thorkel, "when ye have already gone to Gudmund; he must surely have promised thee his help?"

"We could not get his help," says Asgrim.

"Then Gudmund thought the suit likely to make him foes," said Thorkel; "and so no doubt it will be, for such deeds are the worst that have ever been done; nor do I know what can have driven you to come hither to me, and to think that I should be easier to undertake your suit than Gudmund, or that I would back a wrongful quarrel."

Then Asgrim held his peace, and thought it would be hard work to win him over.

Then Thorkel went on and said, "Who is that big and ugly fellow, before whom four men go, pale-faced and sharp featured, and unlucky-looking, and cross-grained?"

"My name is Skarphedinn," said Skarphedinn, "and thou hast no right to pick me out, a guiltless man, for thy railing. It never has befallen me to make my father bow down before me, or to have fought against him, as thou didst with thy father. Thou hast ridden little to the Althing, or toiled in quarrels at it,

and no doubt it is handier for thee to mind thy milking pails at home than to be here at Axewater in idleness. But stay, it were as well if thou pickedst out from thy teeth that steak of mare's rump which thou atest ere thou rodest to the Thing, while thy shepherd looked on all the while, and wondered that thou couldst work such filthiness!"

Then Thorkel sprang up in mickle wrath, and clutched his short sword and said, "This sword I got in Sweden when I slew the greatest champion, but since then I have slain many a man with it, and as soon as ever I reach thee I will drive it through thee, and thou shalt take that for thy bitter words."

Skarphedinn stood with his axe aloft, and smiled scornfully and said, "This axe I had in my hand when I leapt twelve ells across Markfleet and slew Thrain, Sigfus' son, and eight of them stood before me, and none of them could touch me. Never have I aimed weapon at man that I have not smitten him."

And with that he tore himself from his brothers, and Kari his brother-in-law, and strode forward to Thorkel.

Then Skarphedinn said, "Now, Thorkel Foulmouth, do one of these two things: sheathe thy sword and sit thee down, or I drive the axe into thy head and cleave thee down to the chine."

Then Thorkel sate him down and sheathed the sword, and such a thing never happened to him either before or since.

Then Asgrim and his band go out, and Skarphedinn said, "Whither shall we now go?"

"Home to our booths," answered Asgrim.

"Then we fare back to our booths wearied of begging," says Skarphedinn.

"In many places," said Asgrim, "hast thou been rather sharp-tongued, but here now, in what Thorkel had a share methinks thou hast only treated him as is fitting."

Then they went home to their booths, and told Njal, word for word, all that had been done.

"Things," he said, "draw on to what must be."

Now Gudmund the Powerful heard what has passed between Thorkel and Skarphedinn, and said, "Ye all know how things fared between us and the men of Lightwater, but I have never suffered such scorn and mocking at their hands as has befallen Thorkel from Skarphedinn, and this is just as it should be."

Then he said to Einar of Thvera, his brother, "Thou shalt go with all my band, and stand by Njal's sons when the courts go

out to try suits; but if they need help next summer, then I myself will yield them help."

Einar agreed to that, and sent and told Asgrim, and Asgrim said, "There is no man like Gudmund for nobleness of mind," and then he told it to Njal."

120. OF THE PLEADING OF THE SUIT

The next day Asgrim, and Gizur the White, and Hjallti, Skeggi's son, and Einar of Thvera, met together. There, too, was Mord, Valgard's son; he had then let the suit fall from his hand, and given it over to the sons of Sigfus.

Then Asgrim spoke.

"Thee first I speak to about this matter, Gizur the White, and thee Hjallti, and thee Einar, that I may tell you how the suit stands. It will be known to all of you that Mord took up the suit, but the truth of the matter is, that Mord was at Hauskuld's slaying, and wounded him with that wound, for giving which no man was named. It seems to me, then, that this suit must come to naught by reason of a lawful flaw."

"Then we will plead it at once," says Hjallti.

"It is not good counsel," said Thorhall, Asgrim's son, "that this should not be hidden until the courts are set."

"How so?" asks Hjallti.

"If," said Thorhall, "they knew now at once that the suit has been wrongly set on foot, then they may still save the suit by sending a man home from the Thing, and summoning the neighbours from home over again, and calling on them to ride to the Thing, and then the suit will be lawfully set on foot."

"Thou art a wise man, Thorhall," say they, "and we will take thy counsel."

After that each man went to his booth.

The sons of Sigfus gave notice of their suits at the Hill of Laws, and asked in what Quarter Courts they lay, and in what house in the district the defendants dwelt. But on the Friday night the courts were to go out to try suits, and so the Thing was quiet up to that day.

Many sought to bring about an atonement between them, but Flosi was steadfast; but others were still more wordy, and things looked ill.

Now the time comes when the courts were to go out, on the Friday evening. Then the whole body of men at the Thing went

to the courts. Flosi stood south at the court of the men of Rangriver, and his band with him. There with him was Hall of the Side, and Runolf of the Dale, Wolf, Aurpriest's son, and those other men who had promised Flosi help.

But north of the court of the men of Rangriver stood Asgrim, Ellidagrim's son, and Gizur the White, Hjallti, Skeggi's son, and Einar of Thvera. But Njal's sons were at home at their booth, and Kari and Thorleif Crow, and Thorgeir Craggeir, and Thorgrim the Big. They sate all with their weapons, and their band looked safe from onslaught.

Njal had already prayed the judges to go into the court, and now the sons of Sigfus plead their suit. They took witness and bade Njal's sons to listen to their oath; after that they took their oath, and then they declared their suit; then they brought forward witness of the notice, then they bade the neighbours on the inquest to take their seats, then they called on Njal's sons to challenge the inquest.

Then up stood Thorhall, Asgrim's son, and took witness, and forbade the inquest by a protest to utter their finding; and his ground was, that he who had given notice of the suit was truly under the ban of the law, and was himself an outlaw.

"Of whom speakest thou this?" says Flosi.

"Mord, Valgard's son," said Thorhall, "fared to Hauskuld's slaying with Njal's sons, and wounded him with that wound for which no man was named when witness was taken to the death-wounds; and ye can say nothing against this, and so the suit comes to naught."

121. OF THE AWARD OF ATONEMENT BETWEEN FLOSI AND NJAL

Then Njal stood up and said, "This I pray, Hall of the Side, and Flosi, and all the sons of Sigfus, and all our men, too, that ye will not go away, but listen to my words."

They did so, and then he spoke thus: "It seems to me as though this suit were come to naught, and it is likely it should, for it hath sprung from an ill root. I will let you all know that I loved Hauskuld more than my own sons, and when I heard that he was slain, methought the sweetest light of my eyes was quenched, and I would rather have lost all my sons, and that he were alive. Now I ask thee, Hall of the Side, and thee Runolf of the Dale, and thee Hjallti, Skeggi's son, and thee Einar of Thvera, and thee Hafr the

Wise, that I may be allowed to make an atonement for the slaying of Hauskuld on my sons' behalf; and I wish that those men who are best fitted to do so shall utter the award."

Gizur, and Hafr, and Einar, spoke each on their own part, and prayed Flosi to take an atonement, and promised him their friendship in return.

Flosi answered them well in all things, but still did not give his word.

Then Hall of the Side said to Flosi, "Wilt thou now keep thy word, and grant me my boon which thou hast already promised me, when I put beyond sea Thorgrim, the son of Kettle the Fat, thy kinsman, when he had slain Halli the Red."

"I will grant it thee, father-in-law," said Flosi, "for that alone wilt thou ask which will make my honour greater than it erewhile was."

"Then," said Hall, "my wish is that thou shouldst be quickly atoned, and lettest good men and true make an award, and so buy the friendship of good and worthy men."

"I will let you all know," said Flosi, "that I will do according to the word of Hall, my father-in-law, and other of the worthiest men, that he and others of the best men on each side, lawfully named, shall make this award. Methinks Njal is worthy that I should grant him this."

Njal thanked him and all of them, and others who were by thanked them too, and said that Flosi had behaved well.

Then Flosi said, "Now will I name my daysmen:[1] First, I name Hall, my father-in-law; Auzur from Broadwater; Surt, Asbjorn's son of Kirkby; Modolf, Kettle's son" — he dwelt then at Asar — "Hafr the Wise; and Runolf of the Dale; and it is scarce worth while to say that these are the fittest men out of all my company."

Now he bade Njal to name his daysmen, and then Njal stood up, and said, "First of these I name, Asgrim, Ellidagrim's son; and Hjallti, Skeggi's son; Gizur the White; Einar of Thvera; Snorri the Priest; and Gudmund the Powerful."

After that Njal and Flosi, and the sons of Sigfus shook hands, and Njal pledged his hand on behalf of all his sons, and of Kari,

[1] The true English word for "arbitrator," or "umpire." See Job ix. 33 — "Neither is there any daysman betwixt us, that might lay his hand upon us both." See also *Holland's* "Translation of Livy," page 137 — "A more shameful precedent for the time to come: namely, that umpires and *daies-men* should convert the thing in suit unto their own and proper vantage."

his son-in-law, that they would hold to what those twelve men doomed; and one might say that the whole body of men at the Thing was glad at that.

Then men were sent after Snorri and Gudmund, for they were in their booths.

Then it was given out that the judges in this award would sit in the Court of Laws, but all the others were to go away.

122. OF THE JUDGES

Then Snorri the Priest spoke thus, "Now are we here twelve judges to whom these suits are handed over, now I will beg you all that we may have no stumblingblocks in these suits, so that they may not be atoned."

"Will ye," said Gudmund, "award either the lesser or the greater outlawry? Shall they be banished from the district, or from the whole land?"

"Neither of them," says Snorri, "for those banishments are often ill fulfilled, and men have been slain for that sake, and atonements broken, but I will award so great a money fine that no man shall have had a higher price here in the land than Hauskuld."

They all spoke well of his words.

Then they talked over the matter, and could not agree which should first utter how great he thought the fine ought to be, and so the end of it was that they cast lots, and the lot fell on Snorri to utter it.

Then Snorri said, "I will not sit long over this, I will now tell you what my utterance is, I will let Hauskuld be atoned for with triple manfines, but that is six hundred in silver. Now ye shall change it, if ye think it too much or too little."

They said that they would change it in nothing.

"This too shall be added," he said, "that all the money shall be paid down here at the Thing."

Then Gizur the White spoke and said, "Methinks that can hardly be, for they will not have enough money to pay their fines."

"I know what Snorri wishes," said Gudmund the Powerful, "he wants that all we daysmen should give such a sum as our bounty will bestow, and then many will do as we do."

Hall of the Side thanked him, and said he would willingly give as much as any one else gave, and then all the other daysmen agreed to that.

After that they went away, and settled between them that Hall should utter the award at the Hill of Laws.

So the bell was rung, and all men went to the Hill of Laws, and Hall of the Side stood up and spoke, "In this suit, in which we have come to an award, we have been all well agreed, and we have awarded six hundred in silver, and half this sum we the daysmen[1] will pay, but it must all be paid up here at the Thing. But it is my prayer to all the people that each man will give something for God's sake."

All answered well to that, and then Hall took witness to the award, that no one should be able to break it.

Njal thanked them for their award, but Skarphedinn stood by, and held his peace, and smiled scornfully.

Then men went from the Hill of Laws and to their booths, but the daysmen gathered together in the freemen's churchyard the money which they had promised to give.

Njal's sons handed over that money which they had by them, and Kari did the same, and that came to a hundred in silver.

Njal took out that money which he had with him, and that was another hundred in silver.

So this money was all brought before the Hill of Laws, and then men gave so much, that not a penny was wanting.

Then Njal took a silken scarf and a pair of boots and laid them on the top of the heap.

After that, Hall said to Njal, that he should go to fetch his sons, "But I will go for Flosi, and now each must give the other pledges of peace."

Then Njal went home to his booth, and spoke to his sons and said, "Now are our suits come into a fair way of settlement, now are we men atoned, for all the money has been brought together in one place; and now either side is to go and grant the other peace and pledges of good faith. I will therefore ask you this, my sons, not to spoil these things in any way."

Skarphedinn stroked his brow, and smiled scornfully. So they all go to the Court of Laws.

Hall went to meet Flosi and said, "Go thou now to the Court of Laws, for now all the money has been bravely paid down, and it has been brought together in one place."

Then Flosi bade the sons of Sigfus to go up with him, and they all went out of their booths. They came from the east, but Njal went from the west to the Court of Laws, and his sons with him.

[1] [*Cf.* "The Iliad," Bk. XVIII, *supra.*]

Skarphedinn went to the middle bench and stood there.

Flosi went into the Court of Laws to look closely at the money, and said, "This money is both great and good, and well paid down, as was to be looked for."

After that he took up the scarf, and waved it, and asked, "Who may have given this?"

But no man answered him.

A second time he waved the scarf, and asked, "Who may have given this?" and laughed, but no man answered him.

Then Flosi said, "How is it that none of you knows who has owned this gear, or is it that none dares to tell me?"

"Who?" said Skarphedinn, "dost thou think, has given it?"

"If thou must know," said Flosi, "then I will tell thee; I think that thy father the 'Beardess Carle' must have given it, for many know not who look at him whether he is more a man than a woman."

"Such words are ill-spoken," said Skarphedinn, "to make game of him, an old man, and no man of any worth has ever done so before. Ye may know, too, that he is a man, for he has had sons by his wife, and few of our kinsfolk have fallen unatoned by our house, so that we have not had vengeance for them."

Then Skarphedinn took to himself the silken scarf, but threw a pair of blue breeks to Flosi, and said he would need them more.

"Why," said Flosi, "should I need these more?"

"Because," said Skarphedinn, "thou art the sweetheart of the Swinefell's goblin, if, as men say, he does indeed turn thee into a woman every ninth night."

Then Flosi spurned the money, and said he would not touch a penny of it, and then he said he would only have one of two things: either that Hauskuld should fall unatoned, or they would have vengeance for him.

Then Flosi would neither give nor take peace, and he said to the sons of Sigfus, "Go we now home; one fate shall befall us all."

Then they went home to their booth, and Hall said, "Here most unlucky men have a share in this suit."

Njal and his sons went home to their booth, and Njal said, "Now comes to pass what my heart told me long ago, that this suit would fall heavy on us."

"Not so," says Skarphedinn; "they can never pursue us by the laws of the land."

"Then that will happen," says Njal, "which will be worse for all of us."

Those men who had given the money spoke about it, and said that they should take it back; but Gudmund the Powerful said, "That shame I will never choose for myself, to take back what I have given away, either here or elsewhere."

"That is well spoken," they said; and then no one would take it back.

Then Snorri the Priest said, "My counsel is, that Gizur the White and Hjallti, Skeggi's son keep the money till the next Althing; my heart tells me that no long time will pass ere there may be need to touch this money."

Hjallti took half the money and kept it safe, but Gizur took the rest.

Then men went home to their booths.

123. AN ATTACK PLANNED ON NJAL AND HIS SONS

Flosi summoned all his men up to the "Great Rift," and went thither himself.

So when all his men were come, there were one hundred and twenty of them.

Then Flosi spake thus to the sons of Sigfus, "In what way shall I stand by you in this quarrel, which will be most to your minds?"

"Nothing will please us," said Gunnar, Lambi's son, "until those brothers, Njal's sons, are all slain."

"This," said Flosi, "will I promise to you, ye sons of Sigfus, not to part from this quarrel before one of us bites the dust before the other. I will also know whether there be any man here who will not stand by us in this quarrel?"

But they all said they would stand by him.

Then Flosi said, "Come now all to me, and swear an oath that no man will shrink from this quarrel."

Then all went up to Flosi and swore oaths to him; and then Flosi said, "We will all of us shake hands on this, that he shall have forfeited life and land who quits this quarrel ere it be over."

These were the chiefs who were with Flosi: — Kol the son of Thorstein Broadpaunch, the brother's son of Hall of the Side, Hroald, Auzur's son from Broadwater, Auzur son of Aunund Wallet-back, Thorstein the Fair, the son of Gerleif, Glum, Hilldir's son, Modolf, Kettle's son, Thorir the son of Thord Illugi's son of Mauratongue, Kolbein and Egil Flosi's kinsmen, Kettle, Sigfus' son, and Mord his brother, Ingialld of the Springs, Thorkel and

Lambi, Grani, Gunnar's son, Gunnar, Lambi's son, and Sigmund, Sigfus' son, and Hroar from Hromundstede.

Then Flosi said to the sons of Sigfus, "Choose ye now a leader, whomsoever ye think best fitted; for some one man must needs be chief over the quarrel."

Then Kettle of the Mark answered, "If the choice is to be left with us brothers, then we will soon choose that this duty should fall on thee; there are many things which lead to this. Thou art a man of great birth, and a mighty chief, stout of heart, and strong of body, and wise withal, and so we think it best that thou shouldst see to all that is needful in the quarrel."

"It is most fitting," said Flosi, "that I should agree to undertake this as your prayer asks; and now I will lay down the course which we shall follow, and my counsel is, that each man ride home from the Thing and look after his household during the summer, so long as men's haymaking lasts. I, too, will ride home, and be at home this summer; but when that Lord's day comes on which winter is eight weeks off, then I will let them sing me a mass at home, and afterwards ride west across Loomnips Sand; each of our men shall have two horses. I will not swell our company beyond those which have now taken the oath, for we have enough and to spare if all keep true tryst. I will ride all the Lord's day and the night as well, but at even on the second day of the week, I shall ride up to Threecorner ridge about mid-even. There shall ye then be all come who have sworn an oath in this matter. But if there be any one who has not come, and who has joined us in this quarrel, then that man shall lose nothing save his life, if we may have our way."

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Njal rode home from the Thing and his sons. They were at home that summer. Njal asked Kari his son-in-law whether he thought at all of riding east to Dyrholms to his own house.

"I will not ride east," answered Kari, "for one fate shall befall me and thy sons."

Njal thanked him, and said that was only what was likely from him. There were nearly thirty fighting men in Njal's house, reckoning the house-carles.

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There was a carline at Bergthorsknoll, whose name was Saevuna. She was wise in many things, and foresighted; but she was then

very old, and Njal's sons called her an old dotard, when she talked so much, but still some things which she said came to pass. It fell one day that she took a cudgel in her hand, and went up above the house to a stack of vetches. She beat the stack of vetches with her cudgel, and wished it might never thrive, "Wretch that it was!"

Skarphedinn laughed at her, and asked why she was so angry with the vetch stack.

"This stack of vetches," said the carline, "will be taken and lighted with fire when Njal my master is burnt, house and all, and Bergthora my foster-child. Take it away to the water, or burn it up as quick as you can."

"We will not do that," says Skarphedinn, "for something else will be got to light a fire with, if that were foredoomed, though this stack were not here."

The carline babbled the whole summer about the vetch-stack that it should be got indoors, but something always hindered it.

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127. THE ONSLAUGHT[1] ON BERGTHORSKNOLL

Now Flosi speaks to his men, "Now we will ride to Bergthorsknoll, and come thither before supper-time."

They do so. There was a dell in the knoll, and they rode thither, and tethered their horses there, and stayed there till the evening was far spent.

Then Flosi said, "Now we will go straight up to the house, and keep close, and walk slow, and see what counsel they will take."

Njal stood out of doors, and his sons, and Kari and all the serving-men, and they stood in array to meet them in the yard, and they were near thirty of them.

Flosi halted and said, "Now we shall see what counsel they take, for it seems to me, if they stand out of doors to meet us, as though we should never get the mastery over them."

"Then is our journey bad," says Grani, Gunnar's son, "if we are not to dare to fall on them."

"Nor shall that be," says Flosi; "for we will fall on them though they stand out of doors; but we shall pay that penalty, that many will not go away to tell which side won the day."

Njal said to his men, "See ye now what a great band of men they have."

[1] The Icelandic word is "heimsókn," a term which still lingers in the grave offence known in Scottish law as "hamesucken."

"They have both a great and well-knit band," says Skarphedinn; "but this is why they make a halt now, because they think it will be a hard struggle to master us."

"That cannot be why they halt," says Njal; "and my will is that our men go indoors, for they had hard work to master Gunnar of Lithend, though he was alone to meet them; but here is a strong house as there was there, and they will be slow to come to close quarters."

"This is not to be settled in that wise," says Skarphedinn, "for those chiefs fell on Gunnar's house, who were so noble-minded, that they would rather turn back than burn him, house and all; but these will fall on us at once with fire, if they cannot get at us in any other way, for they will leave no stone unturned to get the better of us; and no doubt they think, as is not unlikely, that it will be their deaths if we escape out of their hands. Besides, I am unwilling to let myself be stifled indoors like a fox in his earth."

"Now," said Njal, "as often it happens, my sons, ye set my counsel at naught, and show me no honour, but when ye were younger ye did not so, and then your plans were better furthered."

"Let us do," said Helgi, "as our father wills; that will be best for us."

"I am not so sure of that," says Skarphedinn, "for now he is 'fey'; but still I may well humour my father in this, by being burnt indoors along with him, for I am not afraid of my death."

Then he said to Kari, "Let us stand by one another well, brother-in-law, so that neither parts from the other."

"That I have made up my mind to do," says Kari; "but if it should be otherwise doomed, — well! then it must be as it must be, and I shall not be able to fight against it."

"Avenge us, and we will avenge thee," says Skarphedinn, "if we live after thee."

Kari said so it should be.

Then they all went in, and stood in array at the door.

"Now are they all 'fey,'" said Flosi, "since they have gone indoors, and we will go right up to them as quickly as we can, and throng as close as we can before the door, and give heed that none of them, neither Kari nor Njal's sons, get away; for that were our bane."

So Flosi and his men came up to the house, and set men to watch round the house, if there were any secret doors in it. But Flosi went up to the front of the house with his men.

Then Hroald, Auzur's son ran up to where Skarphedinn stood,

and thrust at him. Skarphedinn hewed the spearhead off the shaft as he held it, and made another stroke at him, and the axe fell on the top of the shield, and dashed back the whole shield on Hroald's body, but the upper horn of the axe caught him on the brow, and he fell at full length on his back, and was dead at once.

"Little chance had that one with thee, Skarphedinn," said Kari, "and thou art our boldest."

"I'm not so sure of that," says Skarphedinn, and he drew up his lips and smiled.

Kari, and Grim, and Helgi, threw out many spears, and wounded many men; but Flosi and his men could do nothing.

At last Flosi said, "We have already gotten great manscathe in our men; many are wounded, and he slain whom we would choose last of all. It is now clear that we shall never master them with weapons; many now there be who are not so forward in fight as they boasted, and yet they were those who goaded us on most. I say this most to Grani, Gunnar's son, and Gunnar, Lambi's son who were the least willing to spare their foes. But still we shall have to take to some other plan for ourselves, and now there are but two choices left, and neither of them good. One is to turn away, and that is our death; the other, is set fire to the house, and burn them inside it; and that is a deed which we shall have to answer for heavily before God, since we are Christian men ourselves; but still we must take to that counsel."

128. NJAL'S BURNING

Now they took fire, and made a great pile before the doors. Then Skarphedinn said, "What, lads! are ye lighting a fire, or are ye taking to cooking?"

"So it shall be," answered Grani, Gunnar's son; "and thou shalt not need to be better done."

"Thou repayest me," said Skarphedinn, "as one may look for from the man that thou art. I avenged thy father, and thou settest most store by that duty which is farthest from thee."

Then the women threw whey on the fire, and quenched it as fast as they lit it. Some, too, brought water, or slops.

Then Kol, Thorstein's son said to Flosi, "A plan comes into my mind; I have seen a loft over the hall among the cross-trees, and we will put the fire in there, and light it with the vetch-stack that stands just above the house."

Then they took the vetch-stack and set fire to it, and they who were inside were not aware of it till the whole hall was a-blaze over their heads.

Then Flosi and his men made a great pile before each of the doors, and then the women folk who were inside began to weep and to wail.

Njal spoke to them and said, "Keep up your hearts, nor utter shrieks, for this is but a passing storm, and it will be long before ye have another such; and put your faith in God, and believe that he is so merciful that he will not let us burn both in this world and the next."

Such words of comfort had he for them all, and others still more strong.

Now the whole house began to blaze. Then Njal went to the door and said, "Is Flosi so near that he can hear my voice?"

Flosi said that he could hear it.

"Wilt thou," said Njal, "take an atonement from my sons, or allow any men to go out?"

"I will not," answers Flosi, "take any atonement from thy sons, and now our dealing shall come to an end once for all, and I will not stir from this spot till they are all dead; but I will allow the women and children and house-carles to go out."

Then Njal went into the house, and said to the folk, "Now all those must go out to whom leave is given, and so go thou out Thorhalla, Asgrim's daughter, and all the people also with thee who may."

Then Thorhalla said, "This is another parting between me and Helgi than I thought of a while ago; but still I will egg on my father and brothers to avenge this manscathe which is wrought here."

"Go, and good go with thee," said Njal, "for thou art a brave woman."

After that she went out and much folk with her.

Then Astrid of Deepback said to Helgi, Njal's son, "Come thou out with me, and I will throw a woman's cloak over thee, and tie thy head with a kerchief."

He spoke against it at first, but at last he did so at the prayer of others.

So Astrid wrapped the kerchief round Helgi's head, but Thorhilda, Skarphedinn's wife, threw the cloak over him, and he went out between them, and then Thorgerda, Njal's daughter, and Helga her sister, and many other folk went out too.

But when Helgi came out Flosi said, "That is a tall woman and broad across the shoulders that went yonder, take her and hold her."

But when Helgi heard that, he cast away the cloak. He had got his sword under his arm, and hewed at a man, and the blow fell on his shield and cut off the point of it, and the man's leg as well. Then Flosi came up and hewed at Helgi's neck, and took off his head at a stroke.

Then Flosi went to the door and called out to Njal, and said he would speak with him and Bergthora.

Now Njal does so, and Flosi said, "I will offer thee, master Njal, leave to go out, for it is unworthy that thou shouldst burn indoors."

"I will not go out," said Njal, "for I am an old man, and little fitted to avenge my sons, but I will not live in shame."

Then Flosi said to Bergthora, "Come thou out, housewife, for I will for no sake burn thee indoors."

"I was given away to Njal young," said Bergthora, "and I have promised him this, that we would both share the same fate."

After that they both went back into the house.

"What counsel shall we now take," said Bergthora.

"We will go to our bed," says Njal, "and lay us down; I have long been eager for rest."

Then she said to the boy Thord, Kari's son, "Thee will I take out, and thou shalt not burn in here."

"Thou hast promised me this, grandmother," says the boy, "that we should never part so long as I wished to be with thee; but methinks it is much better to die with thee and Njal than to live after you."

Then she bore the boy to her bed, and Njal spoke to his steward and said, "Now thou shalt see where we lay us down, and how I lay us out, for I mean not to stir an inch hence, whether reek or burning smart me, and so thou wilt be able to guess where to look for our bones."

He said he would do so.

There had been an ox slaughtered and the hide lay there. Njal told the steward to spread the hide over them, and he did so.

So there they lay down both of them in their bed, and put the boy between them. Then they signed themselves and the boy with the cross, and gave over their souls into God's hand, and that was the last word that men heard them utter.

Then the steward took the hide and spread it over them, and

went out afterwards. Kettle of the Mark caught hold of him, and dragged him out, he asked carefully after his father-in-law Njal, but the steward told him the whole truth. Then Kettle said, "Great grief hath been sent on us, when we have had to share such ill-luck together."

Skarphedinn saw how his father laid him down, and how he laid himself out, and then he said, "Our father goes early to bed, and that is what was to be looked for, for he is an old man."

Then Skarphedinn, and Kari, and Grim, caught the brands as fast as they dropped down, and hurled them out at them, and so it went on awhile. Then they hurled spears in at them, but they caught them all as they flew, and sent them back again.

Then Flosi bade them cease shooting, "for all feats of arms will go hard with us when we deal with them; ye may well wait till the fire overcomes them."

So they do that, and shoot no more.

Then the great beams out of the roof began to fall, and Skarphedinn said, "Now must my father be dead, and I have neither heard groan nor cough from him."

Then they went to the end of the hall, and there had fallen down a cross-beam inside which was much burnt in the middle.

Kari spoke to Skarphedinn, and said, "Leap thou out here, and I will help thee to do so, and I will leap out after thee, and then we shall both get away if we set about it so, for hitherward blows all the smoke."

"Thou shalt leap first," said Skarphedinn; "but I will leap straightway on thy heels."

"That is not wise," says Kari, "for I can get out well enough elsewhere, though it does not come about here."

"I will not do that," says Skarphedinn; "leap thou out first, but I will leap after thee at once."

"It is bidden to every man," says Kari, "to seek to save his life while he has a choice, and I will do so now; but still this parting of ours will be in such wise that we shall never see one another more; for if I leap out of the fire, I shall have no mind to leap back into the fire to thee, and then each of us will have to fare his own way."

"It joys me, brother-in-law," says Skarphedinn, "to think that if thou gettest away thou wilt avenge me."

Then Kari took up a blazing bench in his hand, and runs up along the cross-beam, then he hurls the bench out at the roof, and it fell among those who were outside.

Then they ran away, and by that time all Kari's upper clothing and his hair were a-blaze, then he threw himself down from the roof, and so crept along with the smoke.

Then one man said who was nearest, "Was that a man that leapt out at the roof?"

"Far from it," says another; "more likely it was Skarphedinn who hurled a firebrand at us."

After that they had no more mistrust.

Kari ran till he came to a stream, and then he threw himself down into it, and so quenched the fire on him.

After that he ran along under shelter of the smoke into a hollow, and rested him there, and that has since been called Kari's Hollow.

129. SKARPHEDINN'S DEATH

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133. OF FLOSI'S JOURNEY AND HIS ASKING FOR HELP

After that they busked them from home all together. Flosi was in long-hose because he meant to go on foot, and then he knew that it would seem less hard to the others to walk.

Then they fared from home to Knappvale, but the evening after to Broadwater, and then to Calffell, thence by Bjornness to Hornfirth, thence to Staffell in Lon, and then to Thvattwater to Hall of the Side.

Flosi had to wife Steinvora, his daughter.

Hall gave them a very hearty welcome, and Flosi said to Hall, "I will ask thee, father-in-law, that thou wouldst ride to the Thing with me with all thy Thingmen."

"Now," answered Hall, "it has turned out as the saw says, 'but a short while is hand fain of blow'; and yet it is one and the same man in thy band who now hangs his head, and who then goaded thee on to the worst of deeds when it was still undone. But my help I am bound to lend thee in all such places as I may."

"What counsel dost thou give me," said Flosi, "in the strait in which I now am."

"Thou shalt fare," said Hall, "north, right up to Weaponfirth, and ask all the chiefs for aid, and thou wilt yet need it all before the Thing is over."

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134. OF THORHALL AND KARI

Thorhall, Asgrim's son, and Kari, Solmund's son, rode one day to Mossfell to see Gizur the White; he took them with both hands, and there they were at his house a very long while. Once it happened as they and Gizur talked of Njal's burning, that Gizur said it was very great luck that Kari had got away. Then a song came into Kari's mouth.

"I who whetted helmet-hewer,[1]
I who oft have burnished brand,
From the fray went all unwilling
When Njal's rooftree crackling roared;
Out I leapt when bands of spearmen
Lighted there a blaze of flame!
Listen men unto my moaning,
Mark the telling of my grief."

Then Gizur said, "It must be forgiven thee that thou art mindful, and so we will talk no more about it just now."

Kari says that he will ride home; and Gizur said, "I will now make a clean breast of my counsel to thee. Thou shalt not ride home, but still thou shalt ride away, and east under Eyjafell, to see Thorgeir Craggeir, and Thorleif Crow. They shall ride from the east with thee. They are the next of kin in the suit, and with them shall ride Thorgrim the Big, their brother. Ye shall ride to Mord, Valgard's son's house, and tell him this message from me, that he shall take up the suit for manslaughter for Helgi, Njal's son against Flosi. But if he utters any words against this, then shalt thou make thy self most wrathful, and make believe as though thou wouldst let thy axe fall on his head; and in the second place, thou shalt assure him of my wrath if he shows any ill will. Along with that shalt thou say, that I will send and fetch away my daughter Thorkatla, and make her come home to me; but that he will not abide, for he loves her as the very eyes in his head."

Kari thanked him for his counsel. Kari spoke nothing of help to him, for he thought he would show himself his good friend in this as in other things.

Thence Kari rode east over the rivers, and so to Fleetlithe, and east across Markfleet, and so on to Selialandsmull. So they ride east to Holt.

Thorgeir welcomed them with the greatest kindliness. He told them of Flosi's journey, and how great help he had got in the east firths.

[1] "Helmet-hewer," sword.

Kari said it was no wonder that he, who had to answer for so much, should ask for help for himself.

Then Thorgeir said, "The better things go for them, the worse it shall be for them; we will only follow them up so much the harder."

Kari told Thorgeir of Gizur's advice. After that they ride from the east to Rangrivervale to Mord, Valgard's son's house. He gave them a hearty welcome. Kari told him the message of Gizur his father-in-law. He was slow to take the duty on him, and said it was harder to go to law with Flosi than with any other ten men.

"Thou behavest now as he [1] thought," said Kari; "for thou art a bad bargain in every way; thou art both a coward and heartless, but the end of this shall be as is fitting, that Thorkatla shall fare home to her father."

She busked her at once, and said she had long been "boun" to part from Mord. Then he changed his mood and his words quickly, and begged off their wrath, and took the suit upon him at once.

"Now," said Kari, "thou has taken the suit upon thee, see that thou pleadest it without fear, for thy life lies on it."

Mord said he would lay his whole heart on it to do this well and manfully.

After that Mord summoned to him nine neighbours, they were all near neighbours to the spot where the deed was done. Then Mord took Thorgeir by the hand and named two witnesses to bear witness, "That Thorgeir, Thorir's son hands me over a suit for manslaughter against Flosi, Thord's son, to plead it for the slaying of Helgi, Njal's son, with all those proofs which have to follow the suit. Thou handest over to me this suit to plead and to settle, and to enjoy all rights in it, as though I were the rightful next of kin. Thou handest it over to me by law, and I take it from thee by law."

A second time Mord named his witnesses, "To bear witness," said he, "that I give notice of an assault laid down by law against Flosi, Thord's son, for that he dealt Helgi, Njal's son a brain, or a body, or a marrow wound, which proved a death wound; and from which Helgi got his death. I give notice of this before five witnesses" — here he named them all by name — "I give this lawful notice. I give notice of a suit which Thorgeir, Thorir's son has handed over to me."

[1] Gizur.

Again he named witnesses "To bear witness that I give notice of a brain, or a body, or a marrow wound against Flosi, Thord's son, for that wound which proved a death wound, but Helgi got his death therefrom on such and such a spot, when Flosi, Thord's son first rushed on Helgi, Njal's son with an assault laid down by law. I give notice of this before five neighbours" — then he named them all by name — "I give this lawful notice. I give notice of a suit which Thorgeir, Thorir's son has handed over to me."

Then Mord named his witnesses again "To bear witness," said he, "that I summon these nine neighbours who dwell nearest the spot" — here he named them all by name — "to ride to the Althing, and to sit on the inquest to find whether Flosi, Thord's son rushed with an assault laid down by law on Helgi, Njal's son, on that spot where Flosi, Thord's son dealt Helgi, Njal's son a brain, or a body, or a marrow wound, which proved a death wound, and from which Helgi got his death. I call on you to utter all those words which ye are bound to find by law, and which I shall call on you to utter before the court, and which belong to this suit; I call upon you by a lawful summons — I call on you so that ye may yourselves hear — I call on you in the suit which Thorgeir, Thorir's son has handed over to me."

Again Mord named his witnesses "To bear witness, that I summon these nine neighbours who dwell nearest to the spot to ride to the Althing, and to sit on an inquest to find whether Flosi, Thord's son wounded Helgi, Njal's son with a brain, or body, or marrow wound, which proved a death wound, and from which Helgi got his death, on that spot where Flosi, Thord's son first rushed on Helgi, Njal's son with an assault laid down by law. I call on you to utter all those words which ye are bound to find by law, and which I shall call on you to utter before the court, and which belong to this suit. I call upon you by a lawful summons — I call on you so that ye may yourselves hear — I call on you in the suit which Thorgeir, Thorir's son has handed over to me."

Then Mord said, "Now is the suit set on foot as ye asked, and now I will pray thee, Thorgeir Craggeir, to come to me when thou ridest to the Thing, and then let us both ride together, each with our band, and keep as close as we can together, for my band shall be ready by the very beginning of the Thing, and I will be true to you in all things."

They showed themselves well pleased at that, and this was fast bound by oaths, that no man should sunder himself from another

till Kari willed it, and that each of them should lay down his life for the other's life. Now they parted with friendship, and settled to meet again at the Thing.

Now Thorgeir rides back east, but Kari rides west over the rivers till he came to Tongue, to Asgrim's house. He welcomed them wonderfully well, and Kari told Asgrim all Gizur the White's plan, and of the setting on foot of the suit.

"I looked for as much from him," says Asgrim, "that he would behave well, and now he has shown it."

Then Asgrim went on, "What heardest thou from the east of Flosi?"

"He went east all the way to Weaponfirth," answers Kari, "and nearly all the chiefs have promised to ride with him to the Althing, and to help him. They look, too, for help from the Reykdalesmen, and the men of Lightwater, and the Axefirthers."

Then they talked much about it, and so the time passes away up to the Althing.

Thorhall, Asgrim's son took such a hurt in his leg that the foot above the ankle was as big and swollen as a woman's thigh, and he could not walk save with a staff. He was a man tall in growth, and strong and powerful, dark of hue in hair and skin, measured and guarded in his speech, and yet hot and hasty tempered. He was the third greatest lawyer in all Iceland.

Now the time comes that men should ride from home to the Thing, Asgrim said to Kari, "Thou shalt ride at the very beginning of the Thing, and fit up our booths, and my son Thorhall with thee. Thou wilt treat him best and kindest, as he is footlame, but we shall stand in the greatest need of him at this Thing. With you two, twenty men more shall ride."

After that they made ready for their journey, and then they rode to the Thing, and set up their booths, and fitted them out well.

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137. OF EYJOLF, BOLVERK'S SON

There was a man named Eyjolf. He was the son of Bolverk, the son of Eyjolf the Guileful, of Otterdale. Eyjolf was a man of great rank, and best skilled in law of all men, so that some said he was the third best lawyer in Iceland. He was the fairest in face of all men, tall and strong, and there was the making of a great chief in him. He was greedy of money, like the rest of his kinsfolk.

One day Flosi went to the booth of Bjarni, Broddhelgi's son. Bjarni took him by both hands, and sat Flosi down by his side. They talked about many things, and at last Flosi said to Bjarni, "What counsel shall we now take?"

"I think," answered Bjarni, "that it is now hard to say what to do, but the wisest thing seems to me to go round and ask for help, since they are drawing strength together against you. I will also ask thee, Flosi, whether there be any very good lawyer in your band; for now there are but two courses left; one to ask if they will take an atonement, and that is not a bad choice, but the other is to defend the suit at law, if there be any defence to it, though that will seem to be a bold course; and this is why I think this last ought to be chosen, because ye have hitherto fared high and mightily, and it is unseemly now to take a lower course."

"As to thy asking about lawyers," said Flosi, "I will answer thee at once that there is no such man in our band; nor do I know where to look for one except it be Thorkel, Geitir's son, thy kinsman."

"We must not reckon on him," said Bjarni, "for though he knows something of law, he is far too wary, and no man need hope to have him as his shield; but he will back thee as well as any man who backs thee best, for he has a stout heart; besides, I must tell thee that it will be that man's bane who undertakes the defence in this suit for the burning, but I have no mind that this should befall my kinsman Thorkel, so ye must turn your eyes elsewhither."

Flosi said he knew nothing about who were the best lawyers.

"There is a man named Eyjolf," said Bjarni; "he is Bolverk's son, and he is the best lawyer in the Westfirther's Quarter; but you will need to give him much money if you are to bring him into the suit, but still we must not stop at that. We must also go with our arms to all law business, and be most wary of ourselves, but not meddle with them before we are forced to fight for our lives. And now I will go with thee, and set out at once on our begging for help, for now methinks the peace will be kept but a little while longer."

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Then they went to meet Eyjolf, and hailed him. Eyjolf knew Bjarni at once, and greeted him well. Bjarni took Eyjolf by the hand, and led him up into the "Great Rift." Flosi's and Bjarni's men followed after, and Eyjolf's men went also with him. They bade them stay upon the lower brink of the Rift, and look about

them, but Flosi, and Bjarni, and Eyjolf went on till they came to where the path leads down from the upper brink of the Rift.

Flosi said it was a good spot to sit down there, for they could see around them far and wide. Then they sat them down there. They were four of them together, and no more.

Then Bjarni spoke to Eyjolf, and said, "Thee, friend, have we come to see, for we much need thy help in every way."

"Now," said Eyjolf, "there is good choice of men here at the Thing, and ye will not find it hard to fall on those who will be a much greater strength to you than I can be."

"Not so," said Bjarni, "thou hast many things which show that there is no greater man than thou at the Thing; first of all, that thou art so well-born, as all those men are who are sprung from Ragnar Hairybreeks; thy forefathers, too, have always stood first in great suits, both here at the Thing, and at home in their own country, and they have always had the best of it; we think, therefore, it is likely that thou wilt be lucky in winning suits, like thy kinsfolk."

"Thou speakest well, Bjarni," said Eyjolf; "but I think that I have small share in all this that thou sayest."

Then Flosi said, "There is no need beating about the bush as to what we have in mind. We wish to ask for thy help, Eyjolf, and that thou wilt stand by us in our suits, and go to the court with us, and undertake the defence, if there be any, and plead it for us, and stand by us in all things that may happen at this Thing."

Eyjolf jumped up in wrath, and said that no man had any right to think that he could make a catspaw of him, or drag him on if he had no mind to go himself.

"I see, too, now," he says, "what has led you to utter all those fair words with which ye began to speak to me."

Then Hallbjorn the Strong caught hold of him and sate him down by his side, between him and Bjarni, and said, "No tree falls at the first stroke, friend, but sit here awhile by us." Then Flosi drew a gold ring off his arm.

"This ring will I give thee, Eyjolf, for thy help and friendship, and so show thee that I will not befool thee. It will be best for thee to take the ring, for there is no man here at the Thing to whom I have ever given such a gift."

The ring was such a good one, and so well made, that it was worth twelve hundred yards of russet stuff.

Hallbjorn drew the ring on Eyjolf's arm; and Eyjolf said, "It is now most fitting that I should take the ring, since thou

behavest so handsomely; and now thou mayest make up thy mind that I will undertake the defence, and do all things needful."

"Now," said Bjarni, "ye behave handsomely on both sides, and here are men well fitted to be witnesses, since I and Hallbjorn are here, and thou hast undertaken the suit."

Then Eyjolf arose, and Flosi too, and they took one another by the hand; and so Eyjolf undertook the whole defence of the suit off Flosi's hands, and so, too, if any suit arose out of the defence, for it often happens that what is a defence in one suit, is a plaintiff's plea in another. So he took upon him all the proofs and proceedings which belonged to those suits, whether they were to be pleaded before the Quarter Court or the Fifth Court. Flosi handed them over in lawful form, and Eyjolf took them in lawful form, and then he said to Flosi and Bjarni, "Now I have undertaken this defence just as ye asked, but my wish it is that ye should still keep it secret at first; but if the matter comes into the Fifth Court, then be most careful not to say that ye have given goods for my help."

Then Flosi went home to his booth, and Bjarni with him, but Eyjolf went to the booth of Snorri the Priest, and sate down by him, and they talked much together.

Snorri the Priest caught hold of Eyjolf's arm, and turned up the sleeve, and sees that he had a great ring of gold on his arm. Then Snorri the Priest said, "Pray, was this ring bought or given?"

Eyjolf was put out about it, and had never a word to say. Then Snorri said, "I see plainly that thou must have taken it as a gift, and may this ring not be thy death!"

Eyjolf jumped up and went away, and would not speak about it; and Snorri said, as Eyjolf arose, "It is very likely that thou wilt know what kind of gift thou hast taken by the time this Thing is ended."

Then Eyjolf went to his booth.

138. OF ASGRIM, AND GIZUR, AND KARI

Now Asgrim, Ellidagrim's son, talks to Gizur the White, and Kari, Solmund's son, and to Hjallti, Skeggi's son, Mord, Valgard's son, and Thorgeir Craggeir, and says, "There is no need to have any secrets here, for only those men are by who know all our counsel. Now I will ask you if ye know anything of their plans, for if you do, it seems to me that we must take fresh counsel about our own plans."

"Snorri the Priest," answers Gizur the White, "sent a man to me, and bade him tell me that Flosi had gotten great help from the Northlanders; but that Eyjolf, Bolverk's son, his kinsman, had had a gold ring given him by some one, and made a secret of it, and Snorri said it was his meaning that Eyjolf, Bolverk's son must be meant to defend the suit at law, and that the ring must have been given him for that."

They were all agreed that it must be so. Then Gizur spoke to them, "Now has Mord, Valgard's son, my son-in-law, undertaken a suit, which all must think most hard, to prosecute Flosi; but now my wish is that ye share the other suits amongst you, for now it will soon be time to give notice of the suits at the Hill of Laws. We shall need also to ask for more help."

Asgrim said so it should be, "but we will beg thee to go round with us when we ask for help." Gizur said he would be ready to do that.

After that Gizur picked out all the wisest men of their company to go with him as his backers. There was Hjallti, Skeggi's son, and Asgrim, and Kari, and Thorgeir Craggeir.

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139. OF ASGRIM AND GUDMUND

And when they came into the booth then they saw where Gudmund the Powerful sate and talked with Einar, Conal's son, his foster-child; he was a wise man.

Then they come before him, and Gudmund welcomed them very heartily, and made them clear the booth for them, that they might all be able to sit down.

Then they asked what tidings, and Asgrim said, "There is no need to mutter what I have to say. We wish, Gudmund, to ask for thy steadfast help."

"Have ye seen any other chiefs before?" said Gudmund.

They said they had been to see Skapti, Thorod's son and Snorri the Priest, and told him quietly how they had fared with each of them.

Then Gudmund said, "Last time I behaved badly and meanly to you. Then I was stubborn, but now ye shall drive your bargain with me all the more quickly because I was more stubborn then, and now I will go myself with you to the court with all my Thingmen, and stand by you in all such things as I can, and fight for you though this be needed, and lay down my life for your lives.

I will also pay Skapti out in this way, that Thorstein Gape-mouth his son shall be in the battle on our side, for he will not dare to do aught else than I will, since he has Jodisa my daughter to wife, and then Skapti will try to part us."

They thanked him, and talked with him long and low afterwards, so that no other men could hear.

Then Gudmund bade them not to go before the knees of any other chiefs, for he said that would be little-hearted.

"We will now run the risk with the force that we have. Ye must go with your weapons to all law-business, but not fight as things stand."

Then they went all of them home to their booths, and all this was at first with few men's knowledge.

So now the Thing goes on.

140. OF THE DECLARATIONS OF THE SUITS

It was one day that men went to the Hill of Laws, and the chiefs were so placed that Asgrim, Ellidagrim's son, and Gizur the White, and Gudmund the Powerful, and Snorri the Priest, were on the upper hand by the Hill of Laws; but the Eastfirthers stood down below.

Mord, Valgard's son stood next to Gizur his father-in-law, he was of all men the readiest-tongued.

Gizur told him that he ought to give notice of the suit for manslaughter, and bade him speak up, so that all might hear him well.

Then Mord took witness and said, "I take witness to this that I give notice of an assault laid down by law against Flosi, Thord's son, for that he rushed at Helgi, Njal's son and dealt him a brain, or a body, or a marrow wound, which proved a death-wound, and from which Helgi got his death. I say that in this suit he ought to be made a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured in any need. I say that all his goods are forfeited, half to me and half to the men of the Quarter, who have a right by law to take his forfeited goods. I give notice of this suit for manslaughter in the Quarter Court into which this suit ought by law to come. I give notice of this lawful notice; I give notice in the hearing of all men on the Hill of Laws; I give notice of this suit to be pleaded this summer, and of full outlawry against Flosi, Thord's son; I give notice of a suit which Thorgeir, Thorir's son has handed over to me."

Then a great shout was uttered at the Hill of Laws, that Mord spoke well and boldly.

Then Mord began to speak a second time.

"I take you to witness to this," says he, "that I give notice of a suit against Flosi, Thord's son. I give notice for that he wounded Helgi, Njal's son with a brain, or a body, or a marrow wound, which proved a death-wound, and from which Helgi got his death on that spot where Flosi, Thord's son had first rushed on Helgi, Njal's son with an assault laid down by law. I say that thou, Flosi, ought to be made in this suit, a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured in any need. I say that all thy goods are forfeited, half to me and half to the men of the Quarter, who have a right by law to take the goods which have been forfeited by thee. I give notice of this suit in the Quarter Court into which it ought by law to come; I give notice of this lawful notice; I give notice of it in the hearing of all men on the Hill of Laws; I give notice of this suit to be pleaded this summer, and of full outlawry against Flosi, Thord's son. I give notice of the suit which Thorgeir, Thorir's son hath handed over to me."

After that Mord sat him down.

Flosi listened carefully, but said never a word the while.

Then Thorgeir Craggeir stood up and took witness, and said, "I take witness to this, that I give notice of a suit against Glum, Hilldir's son, in that he took firing and lit it, and bore it to the house at Bergthorsknoll, when they were burned inside it, to wit, Njal, Thorgeir's son, and Bergthora, Skarphedinn's daughter, and all those other men who were burned inside it there and then. I say that in this suit he ought to be made a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured in any need. I say that all his goods are forfeited, half to me, and half to the men of the Quarter, who have a right by law to take his forfeited goods; I give notice of this suit in the Quarter Court, into which it ought by law to come. I give notice in the hearing of all men on the Hill of Laws. I give notice of this suit to be pleaded this summer, and of full outlawry against Glum, Hilldir's son."

Kari, Solmund's son declared his suits against Kol, Thorstein's son, and Gunnar, Lambi's son, and Grani, Gunnar's son, and it was the common talk of men that he spoke wondrous well.

Thorleif Crow declared his suit against all the sons of Sigfus, but Thorgrim the Big, his brother, against Modolf, Kettle's son,

and Lambi, Sigurd's son, and Hroar, Hamond's son, brother of Leidolf, the Strong.

Asgrim, Ellidagrim's son declared his suit against Leidolf and Thorstein, Geirleif's son, Arni, Kol's son, and Grim the Red.

And they all spoke well.

After that other men gave notice of their suits, and it was far on in the day that it went on so.

Then men fared home to their booths.

Eyjolf, Bolverk's son went to his booth with Flosi; they passed east around the booth and Flosi said to Eyjolf,

"See'st thou any defence in these suits?"

"None," says Eyjolf.

"What counsel is now to be taken?" says Flosi.

"I will give thee a piece of advice," said Eyjolf. "Now thou shalt hand over thy priesthood to thy brother Thorgeir, but declare that thou hast joined the Thing of Askel the Priest the son of Thorkettle, north away in Reykiardale; but if they do not know this, then may be that this will harm them, for they will be sure to plead their suit in the Eastfirthers' court, but they ought to plead it in the Northlanders' court, and they will overlook that, and it is a Fifth Court matter against them if they plead their suit in another court than that in which they ought, and then we will take that suit up, but not until we have no other choice left."

"May be," said Flosi, "that we shall get the worth of the ring."

"I don't know that," says Eyjolf; "but I will stand by thee at law, so that men shall say that there never was a better defence. Now, we must send for Askel, but Thorgeir shall come to thee at once, and a man with him."

A little while after Thorgeir came, and then he took on him Flosi's leadership and priesthood.

By that time Askel was come thither too, and then Flosi declared that he had joined his Thing, and this was with no man's knowledge save theirs.

Now all is quiet till the day when the courts were to go out to try suits.

141. NOW MEN GO TO THE COURTS

Now the time passes away till the courts were to go out to try suits. Both sides then made them ready to go thither, and armed them. Each side put war-tokens on their helmets.

Then Thorhall, Asgrim's son said, "Walk hastily in nothing,

father mine, and do everything as lawfully and rightly as ye can, but if ye fall into any strait let me know as quickly as ye can, and then I will give you counsel."

Asgrim and the others looked at him, and his face was as though it were all blood, but great teardrops gushed out of his eyes. He bade them bring him his spear, that had been a gift to him from Skarphedinn, and it was the greatest treasure.

Asgrim said as they went away, "Our kinsman Thorhall was not easy in his mind as we left him behind in the booth, and I know not what he will be at."

Then Asgrim said again, "Now we will go to Mord, Valgard's son, and think of nought else but the suit, for there is more sport in Flosi than in very many other men."

Then Asgrim sent a man to Gizur the White, and Hjallti, Skeggi's son, and Gudmund the Powerful. Now they all came together, and went straight to the court of Eastfirthers. They went to the court from the south, but Flosi and all the Eastfirthers with him went to it from the north. There were also the men of Reykdale and the Axefirthers with Flosi. There, too, was Eyjolf, Bolverk's son. Flosi looked at Eyjolf, and said, "All now goes fairly, and may be that it will not be far off from thy guess."

"Keep thy peace about it," says Eyjolf, "and then we shall be sure to gain our point."

Now Mord took witness, and bade all those men who had suits of outlawry before the court to cast lots who should first plead or declare his suit, and who next, and who last; he bade them by a lawful bidding before the court, so that the judges heard it. Then lots were cast as to the declarations, and he, Mord, drew the lot to declare his suit first.

Now Mord, Valgard's son took witness the second time, and said, "I take witness to this, that I except all mistakes in words in my pleading, whether they be too many or wrongly spoken, and I claim the right to amend all my words until I have put them into proper lawful shape. I take witness to myself of this."

Again Mord said, "I take witness to this, that I bid Flosi, Thord's son, or any other man who has undertaken the defence made over to him by Flosi, to listen for him to my oath, and to my declaration of my suit, and to all the proofs and proceedings which I am about to bring forward against him; I bid him by a lawful bidding before the court, so that the judges may hear it across the court."

Again Mord, Valgard's son said, "I take witness to this, that I

take an oath on the book, a lawful oath, and I say it before God, that I will so plead this suit in the most truthful, and most just and most lawful way, so far as I know; and that I will bring forward all my proofs in due form, and utter them faithfully so long as I am in this suit."

After that he spoke in these words, "I have called Thorodd as my first witness, and Thorbjorn as my second; I have called them to bear witness that I gave notice of an assault laid down by law against Flosi, Thord's son, on that spot where he, Flosi, Thord's son, rushed with an assault laid down by law on Helgi, Njal's son, when Flosi, Thord's son wounded Helgi, Njal's son with a brain, or a body, or a marrow wound, which proved a death-wound, and from which Helgi got his death. I said that he ought to be made in this suit a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured in any need; I said that all his goods were forfeited, half to me and half to the men of the Quarter who have the right by law to take the goods which he has forfeited; I gave notice of the suit in the Quarter Court into which the suit ought by law to come; I gave notice of that lawful notice; I gave notice in the hearing of all men at the Hill of Laws; I gave notice of this suit to be pleaded now this summer, and of full outlawry against Flosi, Thord's son. I gave notice of a suit which Thorgeir, Thorir's son had handed over to me; and I had all these words in my notice which I have now used in this declaration of my suit. I now declare this suit of outlawry in this shape before the court of the Eastfirthers over the head of John, as I uttered it when I gave notice of it."

Then Mord spoke again, "I have called Thorodd as my first witness, and Thorbjorn as my second. I have called them to bear witness that I gave notice of a suit against Flosi, Thord's son for that he wounded Helgi, Njal's son with a brain, or a body, or a marrow wound, which proved a death-wound, and from which Helgi got his death. I said that he ought to be made in this suit a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured in any need; I said that all his goods were forfeited, half to me and half to the men of the Quarter who have the right by law to take the goods which he has forfeited; I gave notice of the suit in the Quarter Court into which the suit ought by law to come; I gave notice of that lawful notice; I gave notice in hearing of all men at the Hill of Laws; I gave notice of this suit to be pleaded now this summer, and of full outlawry against Flosi, Thord's son. I gave notice of a suit which Thorgeir, Thorir's son

had handed over to me; and I had all these words in my notice which I have now used in this declaration of my suit. I now declare this suit of outlawry in this shape before the court of the Eastfirthers over the head of John, as I uttered it when I gave notice of it."

Then Mord's witnesses to the notice came before the court, and spake so that one uttered their witness, but both confirmed it by their common consent in this form, "I bear witness that Mord called Thorodd as his first witness, and me as his second, and my name is Thorbjorn" — then he named his father's name — "Mord called us two as his witnesses that he gave notice of an assault laid down by law against Flosi, Thord's son when he rushed on Helgi, Njal's son, in that spot where Flosi, Thord's son dealt Helgi, Njal's son a brain, or a body, or a marrow wound, that proved a death-wound, and from which Helgi got his death. He said that Flosi ought to be made in this suit a guilty man, an outlaw, not to be fed, not to be forwarded, not to be helped or harboured by any man; he said that all his goods were forfeited, half to himself and half to the men of the Quarter who have the right by law to take the goods which he had forfeited; he gave notice of the suit in the Quarter Court into which the suit ought by law to come; he gave notice of that lawful notice; he gave notice in the hearing of all men at the Hill of Laws; he gave notice of this suit to be pleaded now this summer, and of full outlawry against Flosi, Thord's son. He gave notice of a suit which Thorgeir, Thorir's son had handed over to him. He used all those words in his notice which he used in the declaration of his suit, and which we have used in bearing witness; we have now borne our witness rightly and lawfully, and we are agreed in bearing it; we bear this witness in this shape before the Eastfirthers' Court over the head of John,[1] as Mord uttered it when he gave his notice."

A second time they bore their witness of the notice before the court, and put the wounds first and the assault last, and used all the same words as before, and bore their witness in this shape before the Eastfirthers' Court just as Mord uttered them when he gave his notice.

Then Mord's witnesses to the handing over of the suit went before the court, and one uttered their witness, and both confirmed it by common consent, and spoke in these words, "That those

[1] John for a man, and Gudruna for a woman, were standing names in the Formularies of the Icelandic code, answering to the "M or N" in our Liturgy, or to those famous fictions of English law, "John Doe and Richard Roe."

two, Mord, Valgard's son and Thorgeir, Thorir's son, took them to witness that Thorgeir, Thorir's son handed over a suit for manslaughter to Mord, Valgard's son against Flosi, Thord's son for the slaying of Helgi, Njal's son; he handed over to him then this suit, with all the proofs and proceedings which belonged to the suit, he handed it over to him to plead and to settle, and to make use of all rights as though he were the rightful next of kin; Thorgeir handed it over lawfully, and Mord took it lawfully."

They bore witness of the handing over of the suit in this shape before the Eastfirthers' Court over the head of John, just as Mord or Thorgeir had called them as witnesses to prove.

They made all these witnesses swear on oath ere they bore witness, and the judges too.

Again Mord, Valgard's son took witness. "I take witness to this," said he, "that I bid those nine neighbours whom I summoned when I laid this suit against Flosi, Thord's son, to take their seats west on the river-bank, and I call on the defendant to challenge this inquest, I call on him by a lawful bidding before the court so that the judges may hear."

Again Mord took witness. "I take witness to this, that I bid Flosi, Thord's son, or that other man who has the defence handed over to him, to challenge the inquest which I have caused to take their seats west on the river-bank. I bid thee by a lawful bidding before the court so that the judges may hear."

Again Mord took witness. "I take witness to this, that now are all the first steps and proofs brought forward which belong to the suit. Summons to hear my oath, oath taken, suit declared, witness borne to the notice, witness borne to the handing over of the suit, the neighbours on the inquest bidden to take their seats, and the defendant bidden to challenge the inquest. I take this witness to these steps and proofs which are now brought forward, and also to this that I shall not be thought to have left the suit though I go away from the court to look up proofs, or on other business."

Now Flosi and his men went thither where the neighbours on the inquest sate.

Then Flosi said to his men, "The sons of Sigfus must know best whether these are the rightful neighbours to the spot who are here summoned."

Kettle of the Mark answered, "Here is that neighbour who held Mord at the font when he was baptized, but another is his second cousin by kinship."

Then they reckoned up his kinship, and proved it with an oath.

Then Eyjolf took witness that the inquest should do nothing till it was challenged.

A second time Eyjolf took witness, "I take witness to this," said he, "that I challenge both these men out of the inquest, and set them aside" — here he named them by name, and their fathers as well — "for this sake, that one of them is Mord's second cousin by kinship, but the other for gossipry,[1] for which sake it is lawful to challenge a neighbour on the inquest; ye two are for a lawful reason incapable of uttering a finding, for now a lawful challenge has overtaken you, therefore I challenge and set you aside by the rightful custom of pleading at the Althing, and by the law of the land; I challenge you in the cause which Flosi, Thord's son has handed over to me."

Now all the people spoke out, and said that Mord's suit had come to naught, and all were agreed in this that the defence was better than the prosecution.

Then Asgrim said to Mord, "The day is not yet their own, though they think now that they have gained a great step; but now some one shall go to see Thorhall my son, and know what advice he gives us."

Then a trusty messenger was sent to Thorhall, and told him as plainly as he could how far the suit had gone, and how Flosi and his men thought they had brought the finding of the inquest to a dead-lock.

"I will so make it out," says Thorhall, "that this shall not cause you to lose the suit; and tell them not to believe it, though quirks and quibbles be brought against them, for that wiseacre Eyjolf has now overlooked something. But now thou shalt go back as quickly as thou canst, and say that Mord, Valgard's son must go before the court, and take witness that their challenge has come to naught," and then he told him step by step how they must proceed.

The messenger came and told them Thorhall's advice.

Then Mord, Valgard's son went to the court and took witness. "I take witness to this," said he, "that I make Eyjolf's challenge void and of none effect; and my ground is, that he challenged them not for their kinship to the true plaintiff, the next of kin, but for their kinship to him who pleaded the suit; I take this witness to myself, and to all those to whom this witness will be of use."

After that he brought that witness before the court.

[1] "Gossipry," that is, because they were gossips, *God's sib*, relations by baptism.

Now he went whither the neighbours sate on the inquest, and bade those to sit down again who had risen up, and said they were rightly called on to share in the finding of the inquest.

Then all said that Thorhall had done great things, and all thought the prosecution better than the defence.

Then Flosi said to Eyjolf, "Thinkest thou that this is good law?"

"I think so, surely," he says, "and beyond a doubt we overlooked this; but still we will have another trial of strength with them."

Then Eyjolf took witness. "I take witness to this," said he, "that I challenge these two men out of the inquest" — here he named them both — "for that sake that they are lodgers, but not householders; I do not allow you two to sit on the inquest, for now a lawful challenge has overtaken you; I challenge you both and set you aside out of the inquest, by the rightful custom of the Al-thing and by the law of the land."

Now Eyjolf said he was much mistaken if that could be shaken; and then all said that the defence was better than the prosecution.

Now all men praised Eyjolf, and said there was never a man who could cope with him in lawcraft.

Mord, Valgard's son and Asgrim, Ellidagrim's son now sent a man to Thorhall to tell him how things stood; but when Thorhall heard that, he asked what goods they owned, or if they were paupers?

The messenger said that one gained his livelihood by keeping milch-kine, and "he has both cows and ewes at his abode; but the other has a third of the land which he and the freeholder farm, and finds his own food; and they have one hearth between them, he and the man who lets the land, and one shepherd."

Then Thorhall said, "They will fare now as before, for they must have made a mistake, and I will soon upset their challenge and this though Eyjolf had used such big words that it was law."

Now Thorhall told the messenger plainly, step by step, how they must proceed; and the messenger came back and told Mord and Asgrim all the counsel that Thorhall had given.

Then Mord went to the court and took witness. "I take witness to this, that I bring to naught Eyjolf, Bolverk's son's challenge, for that he has challenged those men out of the inquest who have a lawful right to be there; every man has a right to sit on an inquest of neighbours, who owns three hundreds in land or more, though he may have no dairy-stock; and he too has the same right who lives by dairy-stock worth the same sum, though he leases no land."

Then he brought this witness before the court, and then he went whither the neighbours on the inquest were, and bade them sit down, and said they were rightfully among the inquest.

Then there was a great shout and cry, and then all men said that Flosi's and Eyjolf's cause was much shaken, and now men were of one mind as to this, that the prosecution was better than the defence.

Then Flosi said to Eyjolf, "Can this be law?"

Eyjolf said he had not wisdom enough to know that for a surety, and then they sent a man to Skapti, the Speaker of the Law, to ask whether it were good law, and he sent them back word that it was surely good law, though few knew it.

Then this was told to Flosi, and Eyjolf, Bolverk's son asked the sons of Sigfus as to the other neighbours who were summoned thither.

They said there were four of them who were wrongly summoned; "for those sit now at home who were nearer neighbours to the spot."

Then Eyjolf took witness that he challenged all those four men out of the inquest, and that he did it with lawful form of challenge. After that he said to the neighbours, "Ye are bound to render lawful justice to both sides, and now ye shall go before the court when ye are called, and take witness that ye find that bar to uttering your finding; that ye are but five summoned to utter your finding, but that ye ought to be nine; and now Thorhall may prove and carry his point in every suit, if he can cure this flaw in this suit."

And now it was plain in everything that Flosi and Eyjolf were very boastful; and there was a great cry that now the suit for the burning was quashed, and that again the defence was better than the prosecution.

Then Asgrim spoke to Mord, "They know not yet of what to boast ere we have seen my son Thorhall. Njal told me that he had so taught Thorhall law, that he would turn out the best lawyer in Iceland whenever it were put to the proof."

Then a man was sent to Thorhall to tell him how things stood, and of Flosi's and Eyjolf's boasting, and the cry of the people that the suit for the burning was quashed in Mord's hands.

"It will be well for them," says Thorhall, "if they get not disgrace from this. Thou shalt go and tell Mord to take witness, and swear an oath, that the greater part of the inquest is rightly summoned, and then he shall bring that witness before the court,

and then he may set the prosecution on its feet again; but he will have to pay a fine of three marks for every man that he has wrongly summoned; but he may not be prosecuted for that at this Thing; and now thou shalt go back."

He does so, and told Mord and Asgrim all, word for word, that Thorhall had said.

Then Mord went to the court, and took witness, and swore an oath that the greater part of the inquest was rightly summoned, and said then that he had set the prosecution on its feet again, and then he went on, "And so our foes shall have honour from something else than from this, that we have here taken a great false step."

Then there was a great roar that Mord handled the suit well; but it was said that Flosi and his men betook them only to quibbling and wrong.

Flosi asked Eyjolf if this could be good law, but he said he could not surely tell, but said the Lawman must settle this knotty point.

Then Thorkel, Geiti's son went on their behalf to tell the Lawman how things stood, and asked whether this were good law that Mord had said.

"More men are great lawyers now," says Skapti, "than I thought. I must tell thee, then, that this is such good law in all points, that there is not a word to say against it; but still I thought that I alone would know this, now that Njal was dead, for he was the only man I ever knew who knew it."

Then Thorkel went back to Flosi and Eyjolf, and said that this was good law.

Then Mord, Valgard's son went to the court and took witness. "I take witness to this," he said, "that I bid those neighbours on the inquest in the suit which I set on foot against Flosi, Thord's son now to utter their finding, and to find it either against him or for him; I bid them by a lawful bidding before the court, so that the judges may hear it across the court."

Then the neighbours on Mord's inquest went to the court, and one uttered their finding, but all confirmed it by their consent; and they spoke thus, word for word, "Mord, Valgard's son summoned nine of us thanes on this inquest, but here we stand five of us, but four have been challenged and set aside, and now witness has been borne as to the absence of the four who ought to have uttered this finding along with us, and now we are bound by law to utter our finding. We were summoned to bear this witness, whether

Flosi, Thord's son rushed with an assault laid down by law on Helgi, Njal's son, on that spot where Flosi, Thord's son wounded Helgi, Njal's son with a brain, or a body, or a marrow wound, which proved a death-wound, and from which Helgi got his death. He summoned us to utter all those words which it was lawful for us to utter, and which he should call on us to answer before the court, and which belong to this suit; he summoned us, so that we heard what he said; he summoned us in a suit which Thorgeir, Thorir's son had handed over to him, and now we have all sworn an oath, and found our lawful finding, and are all agreed, and we utter our finding against Flosi, and we say that he is truly guilty in this suit. We nine men on this inquest of neighbours so shapen, utter this our finding before the Eastfirthers' Court over the head of John, as Mord summoned us to do; but this is the finding of all of us."

Again a second time they uttered their finding against Flosi, and uttered it first about the wounds, and last about the assault, but all their other words they uttered just as they had before uttered their finding against Flosi, and brought him in truly guilty in the suit.

Then Mord, Valgard's son went before the court, and took witness that those neighbours whom he had summoned in the suit which he had set on foot against Flosi, Thord's son had now uttered their finding, and brought him in truly guilty in the suit; he took witness to this for his own part, or for those who might wish to make use of this witness.

Again a second time Mord took witness and said, "I take witness to this that I call on Flosi, or that man who has to undertake the lawful defence which he has handed over to him, to begin his defence to this suit which I have set on foot against him, for now all the steps and proofs have been brought forward which belong by law to this suit; all witness borne, the finding of the inquest uttered and brought in, witness taken to the finding, and to all the steps which have gone before; but if any such thing arises in their lawful defence which I need to turn into a suit against them, then I claim the right to set that suit on foot against them. I bid this my lawful bidding before the court, so that the judges may hear."

"It gladdens me now, Eyjolf," said Flosi, "in my heart to think what a wry face they will make, and how their pates will tingle when thou bringest forward our defence."

142. OF EYJOLF, BOLVERK'S SON

Then Eyjolf, Bolverk's son went before the court, and took witness to this, "I take witness that this is a lawful defence in this cause, that ye have pleaded the suit in the Eastfirthers' Court, when ye ought to have pleaded it in the Northlanders' Court; for Flosi has declared himself one of the Thingmen of Askel the Priest; and here now are those two witnesses who were by, and who will bear witness that Flosi handed over his priesthood to his brother Thorgeir, but afterwards declared himself one of Askel the Priest's Thingmen. I take witness to this for my own part, and for those who may need to make use of it."

Again Eyjolf took witness, "I take witness," he said, "to this, that I bid Mord who pleads this suit, or the next of kin, to listen to my oath, and to my declaration of the defence which I am about to bring forward; I bid him by a lawful bidding before the court, so that the judges may hear me."

Again Eyjolf took witness, "I take witness to this, that I swear an oath on the book, a lawful oath, and say it before God, that I will so defend this cause, in the most truthful, and most just, and most lawful way, so far as I know, and so fulfil all lawful duties which belong to me at this Thing."

Then Eyjolf said, "These two men I take to witness that I bring forward this lawful defence that this suit was pleaded in another Quarter Court, than that in which it ought to have been pleaded; and I say that for this sake their suit has come to naught; I utter this defence in this shape before the Eastfirthers' Court."

After that he let all the witness be brought forward which belonged to the defence, and then he took witness to all the steps in the defence to prove that they had all been duly taken.

After that Eyjolf again took witness and said, "I take witness to this, that I forbid the judges, by a lawful protest before the priest, to utter judgment in the suit of Mord and his friends, for now a lawful defence has been brought before the court. I forbid you by a protest made before a priest; by a full, fair, and binding protest; as I have a right to forbid you by the common custom of the Althing, and by the law of the land."

After that he called on the judges to pronounce for the defence.

Then Asgrim and his friends brought on the other suits for the burning, and those suits took their course.

143. THE COUNSEL OF THORHALL, ASGRIM'S SON

Now Asgrim and his friends sent a man to Thorhall, and let him be told in what a strait they had come.

"Too far off was I now," answers Thorhall, "for this cause might still not have taken this turn if I had been by. I now see their course that they must mean to summon you to the Fifth Court for contempt of the Thing. They must also mean to divide the Eastfirthers' Court in the suit for the burning, so that no judgment may be given, for now they behave so as to show that they will stay at no ill. Now shalt thou go back to them as quickly as thou canst, and say that Mord must summon them both, both Flosi and Eyjolf, for having brought money into the Fifth Court, and make it a case of lesser outlawry. Then he shall summon them with a second summons for that they have brought forward that witness which had nothing to do with their cause, and so were guilty of contempt of the Thing; and tell them that I say this, that if two suits for lesser outlawry hang over one and the same man, that he shall be adjudged a thorough outlaw at once. And for this ye must set your suits on foot first, that then ye will first go to trial and judgment."

Now the messenger went his way back and told Mord and Asgrim.

After that they went to the Hill of Laws, and Mord, Valgard's son took witness. "I take witness to this that I summon Flosi, Thord's son, for that he gave money for his help here at the Thing to Eyjolf, Bolverk's son. I say that he ought on this charge to be made a guilty outlaw, for this sake alone to be forwarded or to be allowed the right of frithstow,[1] if his fine and bail are brought forward at the execution levied on his house and goods, but else to become a thorough outlaw. I say all his goods are forfeited, half to me and half to the men of the Quarter who have the right by law to take his goods after he has been outlawed. I summon this cause before the Fifth Court, whither the cause ought to come by law; I summon it to be pleaded now and to full outlawry. I summon with a lawful summons. I summon in the hearing of all men at the Hill of Laws."

With a like summons he summoned Eyjolf, Bolverk's son, for that he had taken and received the money, and he summoned him for that sake to the Fifth Court.

Again a second time he summoned Flosi and Eyjolf, for that

[1] An old English law term for asylum or sanctuary.

sake that they had brought forward that witness at the Thing which had nothing lawfully to do with the cause of the parties, and had so been guilty of contempt of the Thing; and he laid the penalty for that at lesser outlawry.

Then they went away to the Court of Laws; there the Fifth Court was then set.

Now when Mord and Asgrim had gone away, then the judges in the Eastfirthers' Court could not agree how they should give judgment, for some of them wished to give judgment for Flosi, but some for Mord and Asgrim. Then Flosi and Eyjolf tried to divide the court, and there they stayed, and lost time over that while the summoning at the Hill of Laws was going on. A little while after Flosi and Eyjolf were told that they had been summoned at the Hill of Laws into the Fifth Court, each of them with two summons. Then Eyjolf said, "In an evil hour have we loitered here while they have been before us in quickness of summoning. Now hath come out Thorhall's cunning, and no man is his match in wit. Now they have the first right to plead their cause before the court, and that was everything for them; but still we will go to the Hill of Laws, and set our suit on foot against them, though that will now stand us in little stead."

Then they fared to the Hill of Laws, and Eyjolf summoned them for contempt of the Thing.

After that they went to the Fifth Court.

Now we must say that when Mord and Asgrim came to the Fifth Court, Mord took witness and bade them listen to his oath and the declaration of his suit, and to all those proofs and steps which he meant to bring forward against Flosi and Eyjolf. He bade them by a lawful bidding before the court, so that the judges could hear him across the court.

In the Fifth Court vouchers had to follow the oaths of the parties, and they had to take an oath after them.

Mord took witness. "I take witness," he said, "to this, that I take a Fifth Court oath. I pray God so to help me in this light and in the next, as I shall plead this suit as I know to be most truthful, and just, and lawful. I believe with all my heart that Flosi is truly guilty in this suit, if I may bring forward my proofs; and I have not brought money into this court in this suit, and I will not bring it. I have not taken money, and I will not take it, neither for a lawful nor for an unlawful end."

The men who were Mord's vouchers then went two of them before the court, and took witness to this — "We take witness that

we take an oath on the book, a lawful oath; we pray God so to help us two in this light and in the next, as we lay it on our honour that we believe with all our hearts that Mord will so plead this suit as he knows to be most truthful, and most just, and most lawful, and that he hath not brought money into this court in this suit to help himself, and that he will not offer it, and that he hath not taken money, nor will he take it, either for a lawful or unlawful end."

Mord had summoned nine neighbours who lived next to the Thingfield on the inquest in the suit, and then Mord took witness, and declared those four suits which he had set on foot against Flosi and Eyjolf; and Mord used all those words in his declaration that he had used in his summons. He declared his suits for outlawry in the same shape before the Fifth Court as he had uttered them when he summoned the defendants.

Mord took witness, and bade those nine neighbours on the inquest to take their seats west on the river bank.

Mord took witness again, and bade Flosi and Eyjolf to challenge the inquest.

They went up to challenge the inquest, and looked narrowly at them, but could get none of them set aside; then they went away as things stood, and were very ill pleased with their case.

Then Mord took witness, and bade those nine neighbours whom he had before called on the inquest, to utter their finding, and to bring it in either for or against Flosi.

Then the neighbours on Mord's inquest came before the court, and one uttered the finding, but all the rest confirmed it by their consent. They had all taken the Fifth Court oath, and they brought in Flosi as truly guilty in the suit, and brought in their finding against him. They brought it in in such a shape before the Fifth Court over the head of the same man over whose head Mord had already declared his suit. After that they brought in all those findings which they were bound to bring in in all the other suits, and all was done in lawful form.

Eyjolf, Bolverk's son and Flosi watched to find a flaw in the proceedings, but could get nothing done.

Then Mord, Valgard's son took witness. "I take witness," said he, "to this, that these nine neighbours whom I called on these suits which I have had hanging over the heads of Flosi, Thord's son, and Eyjolf, Bolverk's son, have now uttered their finding, and have brought them in truly guilty in these suits."

He took this witness for his own part.

Again Mord took witness. "I take witness," he said, "to this, that I bid Flosi, Thord's son, or that other man who has taken his lawful defence in hand, now to begin their defence; for now all the steps and proofs have been brought forward in the suit, summons to listen to oaths, oaths taken, suit declared, witness taken to the summons, neighbours called on to take their seats on the inquest, defendant called on to challenge the inquest, finding uttered, witness taken to the finding."

He took this witness to all the steps that had been taken in the suit.

Then that man stood up over whose head the suit had been declared and pleaded, and summed up the case. He summed up first how Mord had bade them listen to his oath, and to his declaration of the suit, and to all the steps and proofs in it; then he summed up next how Mord took his oath and his vouchers theirs; then he summed up how Mord pleaded his suit, and used the very words in his summing up that Mord had before used in declaring and pleading his suit, and which he had used in his summons, and he said that the suit came before the Fifth Court in the same shape as it was when he uttered it at the summoning. Then he summed up that men had borne witness to the summoning, and repeated all those words that Mord had used in his summons, and which they had used in bearing their witness, "and which I now," he said, "have used in my summing up, and they bore their witness in the same shape before the Fifth Court as he uttered them at the summoning." After that he summed up that Mord bade the neighbours on the inquest to take their seats, then he told next of all how he bade Flosi to challenge the inquest, or that man who had undertaken this lawful defence for him; then he told how the neighbours went to the court, and uttered their finding, and brought in Flosi truly guilty in the suit, and how they brought in the finding of an inquest of nine men in that shape before the Fifth Court. Then he summed up how Mord took witness to all the steps in the suit, and how he had bidden the defendant to begin his defence.

After that Mord, Valgard's son took witness. "I take witness," he said, "to this, that I forbid Flosi, Thord's son, or that other man who has undertaken the lawful defence for him, to set up his defence; for now are all the steps taken which belong to the suit, when the case has been summed up and the proofs repeated."

After that the foreman added these words of Mord to his summing up.

Then Mord took witness, and prayed the judges to give judgment in this suit.

Then Gizur the White said, "Thou wilt have to do more yet, Mord, for four twelves can have no right to pass judgment."

Now Flosi said to Eyjolf, "What counsel is to be taken now?"

Then Eyjolf said, "Now we must make the best of a bad business; but still we will bide our time, for now I guess that they will make a false step in their suit, for Mord prayed for judgment at once in the suit, but they ought to call and set aside six men out of the court, and after that they ought to offer us to call and set aside six other men, but we will not do that, for then they ought to call and set aside those six men, and they will perhaps overlook that; then all their case has come to naught if they do not do that, for three twelves have to judge in every cause."

"Thou art a wise man, Eyjolf," said Flosi, "so that few can come nigh thee."

Mord, Valgard's son took witness. "I take witness," he said "to this, that I call and set aside these six men out of the court" — and named them all by name — "I do not allow you to sit in the court; I call you out and set you aside by the rightful custom of the Althing, and the law of the land."

After that he offered Eyjolf and Flosi, before witnesses, to call out by name and set aside other six men, but Flosi and Eyjolf would not call them out.

Then Mord made them pass judgment in the cause; but when the judgment was given, Eyjolf took witness, and said that all their judgment had come to naught, and also everything else that had been done, and his ground was that three twelves and one half had judged, when three only ought to have given judgment.

"And now we will follow up our suits before the Fifth Court," said Eyjolf, "and make them outlaws."

Then Gizur the White said to Mord, Valgard's son, "Thou hast made a very great mistake in taking such a false step, and this is great ill-luck; but what counsel shall we now take, kinsman Asgrim?" says Gizur.

Then Asgrim said, "Now we will send a man to my son Thorhall, and know what counsel he will give us."

144. BATTLE AT THE ALTHING

Now Snorri the Priest hears how the causes stood, and then he begins to draw up his men in array below "the Great Rift," be-

tween it and Hadbooth, and laid down beforehand to his men how they were to behave.

Now the messenger comes to Thorhall, Asgrim's son, and tells him how things stood, and how Mord, Valgard's son and his friends would all be made outlaws, and the suits for manslaughter be brought to naught.

But when he heard that, he was so shocked at it that he could not utter a word. He jumped up then from his bed, and clutched with both hands his spear, Skarphedinn's gift, and drove it through his foot; then flesh clung to the spear, and the eye of the boil too, for he had cut it clean out of the foot, but a torrent of blood and matter poured out, so that it fell in a stream along the floor. Now he went out of the booth unhalting, and walked so hard that the messenger could not keep up with him, and so he goes until he came to the Fifth Court. There he met Grim the Red, Flosi's kinsman, and as soon as ever they met, Thorhall thrust at him with the spear, and smote him on the shield and clove it in twain, but the spear passed right through him, so that the point came out between his shoulders. Thorhall cast him off his spear.

Then Kari, Solmund's son caught sight of that, and said to Asgrim, "Here, now, is come Thorhall thy son, and has straightway slain a man, and this is a great shame, if he alone shall have the heart to avenge the burning."

"That shall not be," says Asgrim, "but let us turn on them now."

Then there was a mighty cry all over the host, and then they shouted their war-cries.

Flosi and his friends then turned against their foes, and both sides egged on their men fast.

Kari, Solmund's son turned now thither where Arni, Kol's son and Hallbjorn the Strong were in front, and as soon as ever Hallbjorn saw Kari, he made a blow at him, and aimed at his leg, but Kari leapt up into the air, and Hallbjorn missed him. Kari turned on Arni, Kol's son and cut at him, and smote him on the shoulder, and cut asunder the shoulder blade and collar-bone, and the blow went right down into his breast, and Arni fell down dead at once to earth.

After that he hewed at Hallbjorn and caught him on the shield, and the blow passed through the shield, and so down and cut off his great toe. Holmstein hurled a spear at Kari, but he caught it in the air, and sent it back, and it was a man's death in Flosi's band.

Thorgeir Craggier came up to where Hallbjorn the Strong was in front, and Thorgeir made such a spear-thrust at him with his left hand that Hallbjorn fell before it, and had hard work to get on his feet again, and turned away from the fight there and then. Then Thorgeir met Thorwalld, Kettle Rumble's son, and hewed at him at once with the axe, "the ogress of war," which Skarphedinn had owned. Thorwalld threw his shield before him, and Thorgeir hewed the shield and cleft it from top to bottom, but the upper horn of the axe made its way into his breast, and passed into his trunk, and Thorwalld fell and was dead at once.

Now it must be told how Asgrim, Ellidagrim's son, and Thorhall his son, Hjallti, Skeggi's son, and Gizur the White, made an onslaught where Flosi and the sons of Sigfus and the other burners were; then there was a very hard fight, and the end of it was that they pressed on so hard, that Flosi and his men gave way before them. Gudmund the Powerful, and Mord, Valgard's son, and Thorgeir Craggeir, made their onslaught where the Axefirthers and Eastfirthers, and the men of Reykdale stood, and there too there was a very hard fight.

Kari, Solmund's son came up where Bjarni, Broddhelgi's son had the lead. Kari caught up a spear and thrust at him, and the blow fell on his shield. Bjarni slipped the shield on one side of him, else it had gone straight through him. Then he cut at Kari and aimed at his leg, but Kari drew back his leg and turned short round on his heel, and Bjarni missed him. Kari cut at once at him, and then a man ran forward and threw his shield before Bjarni. Kari cleft the shield in twain, and the point of the sword caught his thigh, and ripped up the whole leg down to the ankle. That man fell there and then, and was ever after a cripple so long as he lived.

Then Kari clutched his spear with both hands, and turned on Bjarni and thrust at him; he saw he had no other chance but to throw himself down sidelong away from the blow, but as soon as ever Bjarni found his feet, away he fell back out of the fight.

Thorgeir Craggeir and Gizur the White fell on there where Holmstein, the son of Bersi the Wise, and Thorkel, Geiti's son were leaders, and the end of the struggle was, that Holmstein and Thorkel gave way, and then arose a mighty hooting after them from the men of Gudmund the Powerful.

Thorwalld, Tjorfi's son of Lightwater got a great wound, he was shot in the forearm, and men thought that Halldor, Gudmund the

Powerful's son had hurled the spear, but he bore that wound about with him all his life long, and got no atonement for it.

Now there was a mighty throng. But though we here tell of some of the deeds that were done, still there are far many more of which men have handed down no stories.

Flosi had told them that they should make for the stronghold in the Great Rift if they were worsted, "For there," said he, "they will only be able to attack us on one side." But the band which Hall of the Side and his son Ljot led, had fallen away out of the fight before the onslaught of that father and son, Asgrim and Thorhall. They turned down east of Axewater, and Hall said, "This is a sad state of things when the whole host of men at the Thing fight, and I would, kinsman Ljot, that we begged us help even though that be brought against us by some men, and that we part them. Thou shalt wait for me at the foot of the bridge, and I will go to the booths and beg for help."

"If I see," said Ljot, "that Flosi and his men need help from our men, then I will at once run up and aid them."

"Thou wilt do in that as thou pleasest," says Hall, "but I pray thee to wait for me here."

Now flight breaks out in Flosi's band, and they all fly west across Axewater; but Asgrim and Gizur the White went after them and all their host.

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Then Thorhall said to his father Asgrim, "See there now is Skapti, Thorod's son, father."

"I see him, kinsman," said Asgrim, and then he shot a spear at Skapti, and struck him just below where the calf was fattest, and so through both his legs. Skapti fell at the blow, and could not get up again, and the only counsel they could take who were by, was to drag Skapti flat on his face into the booth of a turf-cutter.

Then Asgrim and his men came up so fast that Flosi and his men gave way before them south along the river to the booths of the men of Modruvale. There was a man outside one booth whose name was Solvi; he was boiling broth in a great kettle, and had just then taken the meat out, and the broth was boiling as hotly as it could.

Solvi cast his eyes on the Eastfirthers as they fled, and they were then just over against him, and then he said, "Can all these cowards who fly here be Eastfirthers, and yet Thorkel, Geiti's son, he ran by as fast as any one of them, and very great lies have been

told about him when men say that he is all heart, but now no one ran faster than he."

Hallbjorn the Strong was near by then, and said, "Thou shalt not have it to say that we are all cowards."

And with that he caught hold of him, and lifted him up aloft, and thrust him head down into the broth-kettle. Solvi died at once; but then a rush was made at Hallbjorn himself, and he had to turn and fly.

Flosi threw a spear at Bruni, Haflidi's son, and caught him at the waist, and that was his bane; he was one of Gudmund the Powerful's band.

Thorstein, Hlenni's son took the spear out of the wound, and hurled it back at Flosi, and hit him on the leg, and he got a great wound and fell; he rose up again at once.

Then they passed on to the Waterfirthers' booth, and then Hall and Ljot came from the east across the river, with all their band; but just when they came to the lava, a spear was hurled out of the band of Gudmund the Powerful, and it struck Ljot in the middle, and he fell down dead at once; and it was never known surely who had done that manslaughter.

Flosi and his men turned up round the Waterfirthers' booth, and then Thorgier Craggeir said to Kari, Solmund's son, "Look, yonder now is Eyjolf, Bolverk's son, if thou hast a mind to pay him off for the ring."

"That I ween is not far from my mind," says Kari, and snatched a spear from a man, and hurled it at Eyjolf, and it struck him in the waist, and went through him, and Eyjolf then fell dead to earth.

Then there was a little lull in the battle, and then Snorri the Priest came up with his band, and Skapti was there in his company, and they ran in between them, and so they could not get at one another to fight.

Then Hall threw in his people with theirs, and was for parting them there and then, and so a truce was set, and was to be kept throughout the Thing, and then the bodies were laid out and borne to the church, and the wounds of those men were bound up who were hurt.

The day after men went to the Hill of Laws. Then Hall of the Side stood up and asked for a hearing, and got it at once; and he spoke thus, "Here there have been hard happenings in lawsuits and loss of life at the Thing, and now I will show again that I am little-hearted, for I will now ask Asgrim and the others who take

the lead in these suits, that they grant us an atonement on even terms;" and so he goes on with many fair words.

Kari, Solmund's son said, "Though all others take an atonement in their quarrels, yet will I take no atonement in my quarrel; for ye will wish to weigh these manslayings against the burning, and we cannot bear that."

In the same way spoke Thorgeir Craggeir.

Then Skapti, Thorod's son stood up and said, "Better had it been for thee, Kari, not to have run away from thy father-in-law and thy brothers-in-law, than now to sneak out of this atonement."

Then Kari sang:

"Warrior wight that weapon wieldest
Spare thy speering why we fled,
Oft for less falls hail of battle,
Forth we fled to wreak revenge;
Who was he, fainthearted foeman,
Who, when tongues of steel sung high,
Stole beneath the booth for shelter,
While his beard blushed red for shame?"

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Then there was great laughter. Snorri the Priest smiled and sang this between his teeth, but so that many heard:

"Skill hath Skapti us to tell
Whether Asgrim's shaft flew well;
Holmstein hurried swift to fight,
Thorstein turned him soon to flight."

Now men burst out in great fits of laughter.

Then Hall of the Side said, "All men know what a grief I have suffered in the loss of my son Ljot; many will think that he would be valued dearest of all those men who have fallen here; but I will do this for the sake of an atonement — I will put no price on my son, and yet will come forward and grant both pledges and peace to those who are my adversaries. I beg thee, Snorri the Priest, and other of the best men, to bring this about, that there may be an atonement between us."

Now he sits him down, and a great hum in his favour followed, and all praised his gentleness and goodwill.

Then Snorri the Priest stood up and made a long and clever speech, and begged Asgrim and the others who took the lead in the quarrel to look towards an atonement.

Then Asgrim said, "I made up my mind when Flosi made an inroad on my house that I would never be atoned with him; but

now, Snorri the Priest, I will take an atonement from him for thy word's sake and other of our friends."

In the same way spoke Thorleif Crow and Thorgrim the Big, that they were willing to be atoned, and they urged in every way their brother Thorgeir Craggeir to take an atonement also; but he hung back, and says he would never part from Kari.

Then Gizur the White said, "Now Flosi must see that he must make his choice, whether he will be atoned on the understanding that some will be out of the atonement."

Flosi says he will take that atonement; "And methinks it is so much the better," he says, "that I have fewer good men and true against me."

Then Gudmund the Powerful said, "I will offer to handsel peace on my behalf for the slayings that have happened here at the Thing, on the understanding that the suit for the burning is not to fall to the ground."

In the same way spoke Gizur the White and Hjallti, Skeggi's son, Asgrim, Ellidagrim's son and Mord, Valgard's son.

In this way the atonement came about, and then hands were shaken on it, and twelve men were to utter the award; and Snorri the Priest was the chief man in the award, and others with him. Then the manslaughters were set off the one against the other, and those men who were over and above were paid for in fines. They also made an award in the suit about the burning.

Njal was to be atoned for with a triple fine, and Bergthora with two. The slaying of Skarphedinn was to be set off against that of Hauskuld the Whiteness Priest. Both Grim and Helgi were to be paid for with double fines; and one full man-fine should be paid for each of those who had been burnt in the house.

No atonement was taken for the slaying of Thord, Kari's son.

It was also in the award that Flosi and all the burners should go abroad into banishment, and none of them was to sail the same summer unless he chose; but if he did not sail abroad by the time that three winters were spent, then he and all the burners were to become thorough outlaws. And it was also said that their outlawry might be proclaimed either at the Harvest-Thing or Spring-Thing, whichever men chose; and Flosi was to stay abroad three winters.

As for Gunnar, Lambi's son, and Grani, Gunnar's son, Glum, Hilldir's son, and Kol, Thorstein's son, they were never to be allowed to come back.

Then Flosi was asked if he would wish to have a price put upon his wound, but he said he would not take bribes for his hurt.

Eyjolf, Bolverk's son had no fine awarded for him, for his unfairness and wrongfulness.

And now this settlement and atonement was handselled and was well kept afterwards.

Asgrim and his friends gave Snorri the priest good gifts, and he had great honour from these suits.

Skapti got a fine for his hurt.

* * * * * * *

Now it must be said that Hall of the Side had suffered his son to fall without a fine, and did that for the sake of an atonement, but then the whole host of men at the Thing agreed to pay a fine for him, and the money so paid was not less than eight hundred in silver, but that was four times the price of a man; but all the others who had been with Flosi got no fines paid for their hurts, and were very ill pleased at it.

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PART II

MODERN OBSERVATIONS OF RETARDED PEOPLES

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Chapter VII

THE URABUNNA TRIBE[1]

1. SOCIAL ORGANIZATION

In the great majority of Australian tribes, but not in all, there is a very definite social organisation, which term we use in connection only with the division of the tribe into two (or more) exogamous, intermarrying groups without reference to the presence or absence of a totemic system. The two systems have become associated together in various ways in different tribes, but are perfectly distinct from one another in origin and significance.

We can recognise three important types of social organisation in the tribes which occupy the country extending from Lake Eyre in the south to the Gulf of Carpentaria in the north. In the first, which exists amongst the Dieri and Urabunna tribes, there are only two main exogamous groups called respectively, in the case of the latter, Matthurie and Kirarawa. We have on a previous occasion, dealt more or less in detail with this, but, for the purpose of comparison, and of giving a general account of the central tribes, we will once more briefly refer to the Urabunna tribe as a typical example of a tribe in which descent is counted in the female line, and in which division has not proceeded beyond the formation of the two original exogamous moieties.[2]

In the Urabunna tribe a Matthurie man must marry a Kirarawa

[1] [Reprinted with the consent of The Macmillan Company, New York, from "The Northern Tribes of Central Australia" (1904), by Baldwin Spencer, M.A., F.R.S., sometime Fellow of Lincoln College, Oxford, Professor of Biology in the University of Melbourne, and F. J. Gillen, Special Magistrate and Sub-protector of Aborigines, South Australia. This work is supplementary to the "Native Tribes of Central Australia" published by the same authors in 1899.]

[2] In this account we use the following terms: (a) *moiety*, indicating the two original exogamous divisions; (b) *class*, the two divisions into which each moiety is usually divided; (c) *subclass*, the two divisions into which in certain tribes each class is divided. We purposely avoid the terms *phratry*, *gens*, *clan*, etc., as liable to be misleading.

woman, and their children pass into the kirarawa moiety. *Vice versa* a Kirarawa man must marry a Matthurie woman. A Matthurie man may not, however, marry any and every Kirarawa woman. In the first place, men of one totem can only marry women of another special totem.[1] For example, a Matthurie who belongs to the dingo totem must marry a Kirarawa of the water-hen totem, so that we may represent the marriage and descent in the Urabunna by the following diagram, in which the letter "m" represents the man and "f" the woman.

m. Dingo Matthurie
marries
f. Water-hen Kirarawa

m. Water-hen Kirarawa	f. Water-hen Kirarawa
marries	marries
f. Dingo Matthurie	m. Dingo Matthurie
m. or f. Dingo Matthurie	m. or f. Water-hen Kirarawa

Further still, a dingo man can only have assigned to him as wife a woman who belongs to one out of certain groups amongst the water-hens. The members of the latter group stand to him in one or other of the following relationships: (1) *Nauilli*, father's sister; (2) *Biaka*, children or brother's children; (3) *Apillia*, mother's younger brother's daughters; (4) *Nupa*, mother's elder brother's daughter. It must be remembered of course that whilst, for the sake of convenience, we use the English terms there is no equivalence whatever between the terms *nia*, *nuthi*, and *luka* and those respectively of father, brother, mother, by which we translate them. The native terms all refer to groups of individuals and not to the individual. Amongst these individuals there are women of three different levels of generation — the *nauilli* belong to that of the father, the *biaka* to younger, and the *apillia* and *nupa* to the same generation as the individual concerned, and it is from amongst these that the woman must come with whom it is lawful for him to have marital relations. He can only marry women who stand to him in the relationship of *nupa* — that is, are the children of his mother's elder brothers, blood or tribal. A simple genealogical tree will make the matter clear. The Kirarawa man numbered 8 can only marry a woman who stands to him in the relationship of the one numbered 7. She is his *nupa*; the woman num-

[1] This appears to be the case in the northern part of the tribe.

bered 9 is his *apillia*, and he may not have marital relations with her.

1. Matthurie, f.	2. Matthurie, m.	3. Matthurie, f.
4. Kirarawa, m.	5. Kirarawa, f.	6. Kirarawa, m.
7. Matthurie, f.	8. Kirarawa, m.	9. Matthurie, f.
	7. Matthurie, f.	

The mother of a man's wife is *nauilli*, and she is *mura* to him and he to her, and they must not speak to one another. Every man has one or more of these *nupa* women who are especially attached to him and live with him in his own camp, but there is no such thing as one man having the exclusive right to one woman; the elder brothers or *nuthi* of the woman, who decide the matter, will give one man a preferential right, but at the same time they will give other men of the same group to which he belongs — that is, men who stand in the same relationship to the woman as he does — a secondary right, and such *nupa* women to whom a man has the legal right of access are spoken of as his *piraungaru*. A woman may be *piraungaru* to a number of men and, as a general rule, men and women who are *piraungaru* to one another are to be found living together in groups. As we have said before, "individual marriage does not exist either in name or in practice amongst the Urabunna tribe."[1] In this tribe we have: —

(1) A group of men all of whom belong to one moiety of the tribe and are regarded as the *nupas*, or possible husbands, of a group of women who belong to the other moiety of the tribe.

(2) One or more women specially allotted to one particular man, each standing in the relationship of *nupa* to the other, but no man having exclusive right to any one woman — only a preferential right.

(3) A group of men who stand in the relationship of *piraungaru* to a group of women, selected from amongst those to whom they are *nupa*. In other words, a group of women of one designation have, normally and actually, marital relations with a group of men of another designation.

There is no evidence of any kind to show that the practice in the Dieri and Urabunna tribes is an abnormal development. The organisation of these tribes, amongst whom the two exogamous intermarrying groups still persist — groups which in other tribes of the central area have been split into four or eight — indicate

[1] "Native Tribes of Central Australia," p. 63 (1899).

their retention of ancient customs which have become modified in tribes such as the Arunta and Warramunga, though amongst them we find traces of customs pointing back to conditions such as still persist amongst the Urabunna. If they were abnormal developments then there could not possibly be found the remarkable but very instructive gradation from the system of individual marriage as developed amongst many Australian tribes and the undoubted exercise of group marital relations which is found in the Dieri and the Urabunna.

In regard to marital relations it may be said that the Central Australian native has certain women, members of a particular group, with whom it is lawful for him and for other men also to have such relations. In the tribes with the simplest and undoubtedly the most primitive organisation these women are many in number. They all belong to a certain group, and in the Urabunna tribe for example, a group of men actually does have, continually and as a normal condition, marital relations with a group of women. This state of affairs has nothing whatever to do with polygamy any more than it has with polyandry. It is simply a question of a group of men and a group of women who may lawfully have what we call marital relations. There is nothing whatever abnormal about it, and in all probability this system of what has been called group marriage, serving as it does to bind more or less closely together groups of individuals who are mutually interested in one another's welfare, has been one of the most powerful agents in the early stages of the upward development of the human race.

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2. MARRIAGE CUSTOMS

Except in the Urabunna tribe, where there is actually group marriage in existence, the system of individual wives prevails — modified, however, by the practice of customs according to which, at certain times, much wider marital relations are allowed. As we have pointed out before,[1] the fundamental feature of the marital relations in all of these tribes is the existence of intermarrying groups of men and women. In the Urabunna tribe group marriage actually exists at the present day, a group of men of a certain designation having, not merely nominally but in actual reality, and under normal conditions, marital relations with a group of women of another special designation. In all other tribes we find

[1] "Native Tribes of Central Australia," p. 98, *et seq.*

that every man of a particular group is lawfully the husband of every woman of another particular group, having no name whereby he distinguishes any one or more of the women of that group, who may have been specially allotted to him, from any of the others; or, in the same way, any name by which he distinguishes the children of these women from those of all the other women of the group.

Whilst there is individual marriage from the Arunta tribe northwards across the continent to the Gulf of Carpentaria there are, in actual practice, frequent occasions when the marital relations are of a much wider nature. There are indeed what may be regarded as three distinct grades of marital relationships. In the first instance there is the normal state of affairs when a woman is the property of one man, who however can, and does, lend her privately to other men, — provided, however, that they belong to her group of lawful husbands, to any one of whom, but to no one else, he may lend her under ordinary circumstances. In the second place we have the wider relations existing at the time of marriage, when men to whom, under ordinary circumstances, she is strictly tabooed have access to her. The particular men vary from tribe to tribe, but in every case, in addition to representatives of one or more forbidden groups, the men who belong to the group of her husbands always have [the right of access]. At this particular time, when the woman is being handed over to one man, there takes place very clearly the recognition of the group right, and probably the recognition of a wider right still. In the third place we have the very wide relations in connection with the performance of ceremonies and the sending out of messengers as described above [in the original work]. In a few special cases the lending of lubras on these occasions is very clearly in the nature of a return for some service rendered, but no such explanation is possible in the majority of cases. At some time or another every man has to send his wife for the use of other men of various classes who are performing ceremonies, and whose wives, in their turn, are offered to him. During the performance of some of these ceremonies there is the very greatest license, a man even having relations with his *mura* woman, who, under ordinary circumstances, is most strictly tabooed to him, and this without her husband being in any way indebted to him. Every one, at different times, is obliged to relinquish, for the time being, his sole right to the woman or women who have been allotted to him.

* * * * * * *

3. TOTEMS

We have already pointed out "that there is a very great difference, so far as matter connected with the totems are concerned, between the true central and the southern-central tribes who come into contact with one another a little to the north-west of Lake Eyre" and that it looks very much as if in the latter locality "we had a meeting-place of two sets of tribes, which migrated southwards, following roughly parallel courses — one across the center of the continent, while the other followed down the course of the main streams on the east and then turned slightly northward on the west side of Lake Eyre; or possibly in their southern wanderings part of this eastern group spread round the north and part round the south end of the lake." [1] These two very distinct series of tribes, which may be typified respectively by the Arunta and Urabunna, differ very markedly from one another in the fact that in one we have descent counted in the paternal and in the other in the maternal line. In the northern Urabunna for example, there are a number of totems belonging exclusively to the Matthurie moiety and others to the Kirarawa, and it therefore follows that a Matthurie man of one totem may only marry a woman of another. Thus a dingo Matthurie man marries a water-hen Kirarawa woman, and the children, following the mother, are all water-hens. Descent in this tribe is strictly maternal, both as regards class and totem. In the Arunta on the other hand, — and this is equally true of all the other tribes northwards to the gulf, — the line of descent so far as class is concerned, is paternal.[2] That of the totem changes gradually as we pass northwards, from the curious system met with in the Arunta, where there is no necessary relationship of any kind between that of children and parents, to that of the Binbinga, Anula, and Mara tribes, where the descent of the totem is as strictly paternal as it is in the case of the class.

This change in the descent of the totem is one of very considerable interest, as it shows that there is by no means the radical difference which, on the surface, there would appear to be, between two tribes in one of which, for example, a man and a woman might both of them be witchetty grubs and their children wild cats, witchetty grubs, evening stars, yams, kangaroos, or indeed members of any totemic group, and another tribe in which the parents must belong to distinct totemic groups, and their children always

[1] "Native Tribes of Central Australia," p. 113.
[2] In most cases indirectly paternal, but in some more directly paternal.

follow that of the father. Taking actual examples from tribes, situated, one in the south and one in the far north we find that in the former (Arunta) the man is a little hawk; wife No. 1 is rat; daughter, witchetty grub; wife No. 2 is kangaroo; no children; wife No. 3 is lizard; two daughters, one emu, the other water-hen. In the second tribe (Binbinga), the father is a snake; his father was a snake; wife No. 1 is a big lizard; one son, snake; one daughter, snake; wife No. 2, emu; one son, snake; two daughters snakes.

In every tribe without exception there exists a firm belief in the reincarnation of ancestors.[1] Emphasis must be laid on the fact that this belief is not confined to tribes such as the Arunta, Warramunga, Binbinga, Anula, and others, amongst whom descent is counted in the male line, but is found just as strongly developed in the Urabunna tribe, in which descent, both of class and totem, is strictly maternal.

In certain respects the beliefs of the Urabunna tribe, which inhabits the country to the south of the Arunta, bear the same relationship to those of the Arunta nation as do the beliefs of the Warramunga tribe in the far north. Briefly stated the Urabunna belief is as follows: — In the Alcheringa (the Urabunna term for this is Ularaka) there existed at first a comparatively small number of individuals who were half-human, half-animal or plant. How they arose no one knows. They lived in the Alcheringa, and behind this it is useless to attempt to pry. They are the exact equivalents of the Alcheringa ancestors of the Arunta. These semi-human creatures were endowed with far greater powers than any living men or women possess. They could walk about either on the earth or beneath it, or could fly through the air. They were the ancestors of the different totemic groups. A great carpet snake individual gave rise to the carpet snake group, two jew lizards gave rise to the jew lizard group, one or two rain creatures gave rise to the rain group, and so on. The belief differs from that of the Arunta, and is in agreement with that of the Warramunga in the fact that the ancestors of each group are few in number, and that we hear nothing of the carrying of Churinga with which their spirit parts were associated.

These old semi-human ancestors wandered about all over the country now occupied by the Urabunna tribe, performing sacred

[1] *Roth* has shown that the idea of conception not being necessarily due to sexual intercourse exists amongst certain tribes in Queensland. See "North Queensland Ethnography," Bulletin No. 5, p. 22.

ceremonies, and, when they did this, they deposited in the ground, or in some natural feature such as a rock or a water-pool, which arose to mark the spot, a number of spirit individuals called *mai-aurli*. After a time some of these became changed into men and women, who formed the first series of totem groups. Thus some of the *mai-aurli* left behind by the carpet snake ancestor changed into carpet snake men and women, some of those left behind by the lizards changed into lizard men and women, and so on through the various totemic groups. Since that early time, when the various totem groups were thus instituted, the *mai-aurli* have been continually undergoing reincarnation.

The tradition concerned with two snakes called Kurnmara, who belonged to the Kirarawa moiety, will serve to illustrate the Urabunna belief. In the Alcheringa a green and a brown snake arose. At first they "sat down," as the natives say, inside a water-hole called Yanidi, making furstring. Coming out they started away on their wanderings and came to Mura-murara, where they made string, ate grass seed, and left *mai-aurli* or spirit children behind them. These *mai-aurli* came out from their bodies. Looking back they saw smoke in the direction of the Macumba River, where the country was all on fire. As they travelled along the brown snake took the lead, the green following behind. It was these two snakes who, during their wanderings, made all of the mound springs which are now so characteristic of this part of the country. Amongst others they made those of Kaltikaltinga, the so-called Thirty Mile Spring, the Fountain Spring, where they again made furstring and ate grass seed, bushes arising to mark the spot where they threw the stalks away. Wandering on they made Akundunda Spring, and at what is now called Mount Margaret Hill they built two stone shelters, one snake sitting down in each. As they walked along they hollowed out the course of the Umbinga Creek, and made the springs called by white men Brinkley, Loddon, and Strangways. After making some more they retraced their steps, and the green snake said to the brown one, "I am Kirarawa, you are Matthurie." They left spirits or *mai-aurli* at all of their camping places. Finally, at a place called Kirri-katjirina, the green snake caught sight of a yellow one and gave chase to it. It dived down into the ground, the green snake went down close by, and the brown one in another spot. Three springs arose to mark the place where they finally disappeared.

It is the *mai-aurli* or spirit children left behind by animal or

semi-human ancestors such as these snakes, who are now continually undergoing reincarnation. In certain cases one particular spot is supposed to be inhabited by spirits of one special totem, but in other cases those of two or more totems may inhabit the same place.[1] Thus, close by our camp, there was a large group of granite boulders which arose in the Alcheringa to mark the place where the ancestors of the pigeon group danced and played about. Of these boulders one represents an old male and another a female ancestor. The rocks are supposed to be inhabited solely by pigeon spirits which emanated from the bodies of the two ancestors. On the other hand there was a water-pool, a quarter of a mile away, inhabited by spirits left there by emu, rain, and a grub ancestor. Sometimes there appears to be a special relationship between totem groups thus associated with one spot — as, for example, in the case of one water-pool where there are spirits belonging to the following totemic groups: — Iarwinnia (mosquito), Momo (blow fly), Murilla (march fly), and Kudnapintjinara (sand fly).

It will thus be evident that in the Urabunna tribe, which is a typical example of those Australian tribes in which there are names for only the two moieties (Kirarawa and Matthurie, or Kararu and Matteri) and no subclasses, and in which descent is counted in the female line, we have a very definite belief in the existence of spirit individuals who are derived from ancestral totemic ancestors and are constantly undergoing reincarnation. Every living individual is the reincarnation of a *mai-aurli* or spirit who emanated from the body of an Alcheringa ancestor.

In the Urabunna just as in the tribes north of the Arunta nation, the totems are strictly divided between the two moieties of the tribe. In these northern tribes descent both of class and totem is strictly paternal, and as we shall describe shortly, a spirit child is not supposed to go into any woman unless she be the wife of a man of the same moiety and totem as the spirit. In the Urabunna the ideas of the natives in regard to this point are very different. The child must belong to the same moiety and totem as its mother, but they have the curious belief that in each successive reincarnation the child changes its sex, moiety, and totem.

Suppose, for example, a Kirarawa man of the emu totem dies. His spirit, which in the case of a dead man they call *kumpira*, goes back to the place at which it was left by the ancestor in the Alcher-

[1] These local totem centres are called *paltinta* by the Urabunna. This term is the equivalent of *oknanikilla* in the Arunta. The spot at which the great ancestor finally went down into the earth is called *bara-kopuqua*.

inga. Here it remains for some time, but sooner or later it is reincarnated. This spirit of the former emu Kirarawa man will not go, so they say, into a Kirarawa woman; if it were to do so it would either be born prematurely and die, or would cause the death of the mother.[1] When undergoing reincarnation it can only enter the body of a Matthurie woman who, of necessity, belongs to another totem, and thus at each reincarnation the individual changes both his or her moiety and totem. Not only is this so, but it also changes its sex — a belief which is also met with in the Warramunga tribe. Every individual goes back after death in spirit form to the spot at which it was left in the Alcheringa by the ancestor of the totem. If, for example, it were originally a pigeon spirit, then it will go back into the rocks at the spot where the pigeon ancestors performed ceremonies in the Alcheringa and left spirits behind. In the course of ages any single individual can run the whole gamut of the totems, alternating from side to side of the tribe, but always returning at death to its original home.[2]

The change of sex may possibly be associated with that of the moiety. At all events the result is that the children of the successive reincarnations of any one spirit always belong to the one moiety of the tribe. If we start with a Kirarawa man, then his children are Matthurie; he is reincarnated as a Matthurie woman and her children are Matthurie; after death she is reincarnated in the form of a Kirarawa man and his children are Matthurie, and so on without ceasing.

In a closely allied tribe, called Wonkgongaru[3] by the Urabunna, inhabiting country away out to the north-west of Lake Eyre, and having the same two moieties, Kiraru and Matthurie,[4] the beliefs are identical with those of the Urabunna. In this tribe, but not in the Urabunna, there is a belief in the former existence of imperfectly formed human beings similar to the *inapertwa* or incomplete men of the Arunta tribe.

Just as in the Arunta and southern tribes so in the Urabunna, the members of the totem groups are supposed to be responsible for the production of the animal or plant after which the group is

[1] Premature births or accidents during child-birth are always attributed to the fact that the spirit has entered the body of the wrong woman.

[2] The Urabunna calls this *gnuru ularaka*, the exact equivalent of *mira alcheringa*, or Alcheringa camp, of the Arunta.

[3] The real name of this tribe is Gongaru. The prefix Wonk means speech. The Dieri call the Urabunna Wonkurabunna and *vice versa* the Urabunna calls the Dieri Wonkadieri, but they call themselves Urabunna.

[4] In some parts of the Urabunna the names are Kirarawa and Matthurie, in others Kiraru and Matteri.

named, and to this end they perform Intichiuma ceremonies. No member of any totemic group eats the totem animal or plant, but there is no objection to his killing it and handing it over to be eaten by men who do not belong to the totemic group.

4. SACRED CEREMONIES CONNECTED WITH THE TOTEMS

The various ceremonies performed by Australian aborigines may be divided into two groups, which are sharply marked off from one another. The one series comprises those which may be witnessed, and perhaps taken part in by women or even children, the other includes those which only initiated men may see and take part in.

The great majority of the latter are connected with the totems, and refer to episodes in the lives of totemic ancestors. Ceremonies such as these are met with in all of the tribes studied by us.

It is astonishing how large a part of a native's life is occupied with the performance of these ceremonies, the enacting of which extends sometimes over the whole of two or three months, during which time one or more will be performed daily. They are often, though by no means always, associated with the performance of the ceremonies attendant upon initiation of young men, or are connected with Intichiuma, and, so far as general features are concerned, there is a wonderful agreement amongst them in all of the central and northern tribes.

In the Arunta tribe, when a boy is circumcised or subincised, he is always shown a few of these ceremonies, which he then sees and learns the meaning of for the first time. At a later period he passes through the Engwura, when a considerable number of natives from different localities are gathered together and a very large number of ceremonies are performed. The Engwura which we witnessed, and have elsewhere described,[1] began in the middle of September and continued until the middle of the succeeding January. During the months of October, November, and nearly the whole of December there was a constant succession of ceremonies, not a day passing without one, and occasionally there were as many as five or six performed within the twenty-four hours. In the Arunta very favorite times for the performance of these ceremonies are just at sunrise and sunset.

As a general rule the number of performers is very small — very rarely exceeding two or three, — and in the northern part of the

[1] "Native Tribes of Central Australia," p. 271.

tribe there is frequently a sacred pole or *nurtunja*[1] used, and in the southern part a *waninga*.[2] These sacred objects usually represent the totemic animal or plant, and to the first named a number of Churinga are very often attached which belong to individual members of the totem. In the Arunta tribe Churinga are very largely used in connection with sacred ceremonies. When a series of these is going to be performed, the first thing that is done is for one or two of the old men to go to the sacred storehouse and bring thence a large number of Churinga. They place these on a special platform built on the ceremonial ground, the spot being regarded as sacred so long as the Churinga remain there.

Sometimes also other objects, such as a shield, or *pitchi*, will be used in connection with the ceremonies. A most characteristic feature of the latter is that the bodies of the performers, as well as any object used during the ceremony, are always decorated with designs done in bird's down, which is called *undattha* — the ceremonies themselves being spoken of as *quabara undattha*.[3] There is not, in the Arunta tribe, any definite order in which the ceremonies are performed, their nature and the time and order of their performance being settled by a few of the leading old men who are present. Men who have had much experience and are looked upon as authorities in these matters are called *oknirabata*, or great teachers.

5. INTICHIUMA CEREMONIES

The name Intichiuma is applied by the Arunta tribe to certain ceremonies intimately associated with the totems, the object of all of them being that of increasing the supply of the material object from which the totemic group takes its name. For the sake of simplicity we use the same name in reference to equivalent ceremonies in other tribes, though it must of course be remembered that the actual term applied to them varies from tribe to tribe.

Up to the present time, apart from "rain-making," Intichiuma ceremonies have been known to exist only in the Central Australian tribes amongst whom descent is counted in the male line. It is therefore of some interest and importance to find that they exist well developed in the case of tribes which count descent in the female line, and in which also there are no true class-names, but only names for the moieties. In fact a closer study of one of these

[1] "Native Tribes of Central Australia," p. 253. [2] *Ibid.*, p. 307.

[3] Similar ceremonies are enacted by the Urabunna tribe, who call them *wadni wandattha*, the ordinary dancing corrobboree being called *warundi*.

maternal descent tribes, such as the Urabunna, which, it may be remarked, is very closely allied to the Dieri, reveals the striking fact that in its beliefs and customs it is fundamentally in agreement with such a tribe as the Arunta. At the same time the differences between the two are such as quite to preclude the possibility of one having simply borrowed ideas from the other.

In the Urabunna tribe Intichiuma ceremonies are called *pitjinta*, and the special name of *pani-inta* is applied to the decorations drawn on the bodies of the performers. At a water-hole called Tjantjiwanperta, close to a hill now known as Mount Kingston, there is a local centre of the rain totem, and here ceremonies are performed for the making of rain. In the Alcheringa an old Kirarawa man of the rain totem named Mutapatta, arose here and also a little boy who was his grandson. The old man had plenty of gypsum. Taking some of this he ground it up finely and threw it about in all directions so as to make clouds. After a time these came down to earth in the form of rain black-fellows. Later on they went up into the sky again in the form of clouds, and then rain fell, filling all the clay pans. Again they came down to earth as men, and then travelled away for a long distance. Every now and then they went up into the sky, forming a long low bank of clouds. Meanwhile an old rain man came down from the north, from the country of the Arunta. The Urabunna man sat down at Tjantjiwanperta, and the Arunta man at a hill close to Mount Kingston. The Arunta said, "I saw your lightning." The Urabunna replied, "What do you want to come and look at my Churinga place for?" [1] The Urabunna man had five stripes of down which he wore across his stomach when he made rain, and the Arunta man stole four of them, so that at the present day the Urabunna man, when performing, can only wear one. After this the Arunta man returned to his own country. The cloud men came back again to Tjantjiwanperta, Mount Kingston arising to mark their tracks.[2] Then the old Urabunna man took them all on his back, the grandson climbing on to the very top, and a cluster of boulders at Tjantjiwanperta now marks the spot where this took place. Every now and again, as they travelled along, they went up into the sky in cloud form and made rain.

A long way off there was another Urabunna rain man, named

[1] This is the same as the *Nanja* in the Arunta — that is, the rock or tree or other object inhabited by the ancestor in spirit form. The Urabunna call it *Watthilli*.

[2] The native name for Mount Kingston is Korara *merkunda*, which means "clouds arising."

Mintali, who was a Matthurie. He saw the clouds appearing and then disappearing in the distance. He also had made a number of rain men who went up into the sky in the form of clouds. The two clouds met and mixed together, and finally all of the men went on into the country of the Wonkgongaru tribe, where they went into the earth, leaving large numbers of *mai-aurli* or spirit children behind them.

At the present day the headman in charge of Tjantjiwanperta makes rain. When performing he wore a head-dress of hair-string completely covered over with white down which extended over his shoulders and chest. A single bar of down passed across the stomach and two down each side of the spine. A tuft of cockatoo feather formed a tip to the head-dress, and bunches of eagle-hawk feathers hung down all round from his waist-girdle. He held a spear-thrower in his hands. First of all he squatted on the ground in front of the few men who formed the audience, one man sitting down on each side striking the earth with a stone while singing the following refrain —

At nau walta walta
Mantja lintjurla an ni
Tjalpara nantja
Mantja an ni tjalpinna.

The performer rose from the ground to a stooping position, striking out and moving the thrower backwards and forwards, quivering his body and turning his head from side to side. At intervals he lifted his body up as if attempting to rise from the ground, while he gazed into the sky in imitation of the cloud men who, in the Alcheringa, used to go into the sky, forming clouds from which the rain came down. Finally he sat down abruptly and the ceremony was at an end.

The general term for Intichiuma in the Urabunna tribe is *pitjinta*, but in addition each totem group has a separate name for its own ceremony. In the case of the rain group this name is *wadni*.

In the Intichiuma ceremony of a snake group called *wadnungadni* the old headman of the group performed. His body was decorated with lines of red and yellow ochre, and on his head he wore a sacred ceremonial object called *pariltja*. It was made of two sticks each about two feet in length, fastened together at right angles. Strands of furstring stretched across from stick to stick, so as to form a kind of banner. Each of the four ends was ornamented with a tuft of cockatoo feather, and it was worn lying flat

on the top of the head. Kneeling on the ground he extended his arms at full length, holding in each hand a sharpened bone about six inches in length. A man on his right took the bone out of that hand and pinched up the skin of the arm, while the performer with his left hand thrust the bone through the skin. Then another man on the left lifted up the skin of that arm and the performer thrust the second bone through it. Then holding his arms extended, he twice sang the following refrain —

Lirri watthai umpai
Lara nalari tjinta.

When this was over he drew the bones out and the ceremony was at an end. As usual, in the case of sacred ceremonies, the words have no meaning known to the natives, and have been handed down from the Alcheringa. It must be rather a painful ordeal to the performer, whose arms were marked with numerous scars. He told us that sometimes he pierces the skin of each arm with three or four bones. The bones are called *paidni*, and when not in use are wrapped in hair cut from the head of a snake man. After the ceremony, and when the snake has become plentiful, men who do not belong to the snake group go out and bring some in to the old man, saying, "*Au uta nanni omba*," which means, "See, here are snakes." A younger tribal brother who does not belong to the totemic group presents him with some fat taken from one of the snakes. He rubs his arms with this and then says, "*Unta tani urquari*," which means, "You eat — all of you."

The ceremony is a simple one as compared with some of the more elaborate ones, such as that of the Udniringita grub group in the Arunta tribe, but its significance is unmistakable. The old man told us that, if the men who did not belong to the totem group were to eat the snake without first bringing it in to him and asking his permission to do so, he would warn them that by and by they would see no more snakes.

6. INITIATION CEREMONIES

In every tribe there are certain ceremonies through which all of the youths must pass before they are admitted to the ranks of the men and allowed to see or take part in any of the performances which are regarded as sacred. The more important of these ceremonies are two in number, and are fundamentally similar in all of the tribes. They are those of circumcision and subincision. In this respect the central tribes differ markedly from those of the

east and south-eastern coastal districts, amongst whom the initiation ceremonies are, or rather were, of a very different nature.

Amongst these coastal tribes a very characteristic ceremony consisted in the knocking out of one or more of the upper incisor teeth. It is a curious fact that the central tribes very often performed this ceremony, but in this instance it has nothing whatever to do with initiation, and is not restricted to the men, as of course it is amongst the tribes in which it is associated with initiation. As we have elsewhere stated,[1] it appears to be very probable that this was the older form of initiation common to the ancestors of the central, eastern, and south-eastern tribes, and that in course of time it was, for some reason or another, superseded in the case of the central tribes by the ceremonies now in vogue. When once the latter became established, then the older ceremony lost all sacred significance, and came to be practised indiscriminately by men and women alike. It is at all events a very suggestive fact that whilst amongst the central tribes we find traces of the customs associated with initiation in the eastern and south-eastern coastal tribes, we do not, on the other hand, find amongst the latter even the slightest trace of the characteristic and important ceremonies of the central and western natives.

In addition to the rites of circumcision and subincision, there are other ceremonies associated with initiation through which in some cases the youths and in others the adult men must pass. These are, however, really of secondary importance. One of them is associated with boys at an early age and the other with men of mature age, while the two important ones are always performed when the youth arrives at puberty. We tried in vain to find any satisfactory explanation of the ceremonies of circumcision and subincision, but so far as we could discover, the native has no idea whatever of what these ceremonies mean. One thing is quite clear, and that is, they have not the slightest reference to keeping down the numbers of the tribe.[2] It must always, in regard to this matter, be borne in mind that in all of these tribes no one is allowed to have a wife until he has passed through the rites of subincision and circumcision, and that indeed the women look with contempt upon those who have not done so. Further still, if the natives do not wish a child to live, they adopt the very simple expedient of killing it as soon as ever it is born. This plan is by no means

[1] "Native Tribes of Central Australia," p. 453.

[2] This has been pointed out previously by *Roth*, "Ethnological Studies among the North-west-central Queensland Aborigines," p. 179, and also by ourselves, "Native Tribes of Central Australia," p. 264.

seldom adopted, and with this easy and well-recognised means of keeping down the population always to hand, it is scarcely likely that the men will submit to what is, after all, a very painful operation for the purpose of achieving a result which not only can be, but normally is, gained by that of infanticide. These initiation ceremonies are of very ancient date, and their true meaning remains yet to be discovered. We tried hard to find among the traditions of the various tribes anything which might afford a clue to their meaning, but without success, and we know as little now as we did at the beginning of our work. The natives themselves have no idea in regard to their significance, and it is a rather curious fact that they have not invented some tradition to explain their meaning. All that they can tell you is that, in the Alcheringa, or the equivalent of the same in the different tribes, there was some ancestor or other who first of all performed one or both of the operations, usually upon himself first and later upon other individuals. Since that time the natives have continued to follow his example, but why their ancestor first of all performed the ceremony they have not the vaguest idea.

The ceremonies can never have had any reference directly to procreation, for the simple reason that the natives, one and all in these tribes, believe that the child is the direct result of the entrance into the mother of an ancestral spirit individual. . . . There are, for example, in the Arunta country certain stones which are supposed to be charged with spirit children who can, by magic, be made to enter the bodies of the women, or will do so of their own accord. Again, in the Warramunga tribe, the women are very careful not to strike the trunks of certain trees with an axe, because the blow might cause spirit children to emanate from them and enter their bodies. They imagine that the spirit is very minute — about the size of a small grain of sand, — and that it enters the woman through the navel and grows within her into the child. It will thus be seen that, unless the natives have once possessed, but have since lost, all idea of the association between procreation and the intercourse of the sexes, which is extremely improbable, the elaborate and painful ceremonies of initiation cannot in their origin have had any direct relation to procreation.

There is one curious fact in regard to the distribution of the initiation ceremonies amongst the tribes in the northern part of the continent. Occupying the country in the Port Darwin district is a tribe called the Larakia, which apparently differs from all others in this part of the continent in regard to initiation. In

connection with the latter this tribe practises neither the rite of knocking out of teeth nor that of circumcision and subincision. Unfortunately we could not work amongst them, and were only able to gather a little information from a member of the tribe — an elderly man — who happened to come down to the Macarthur River when we were there. The tribe has for long been under the influence of the white man, but the absence of ceremonies, so characteristic of the surrounding tribes, has nothing to do with this fact. The initiation of the Larakia youths takes the form of a series of more or less disagreeable tests, which are evidently designed to try the strength and endurance of those passing through them. A number of youths who have arrived at the age of puberty are taken to a retired spot under charge of certain old men, whose orders they have to obey implicitly. Here, as our informant told us, the old men do not give them too much to eat. A younger brother is provided by an elder brother with such food as he is allowed to have. Every now and again an old man, without any warning or reason, will bestow a hard blow or a kick upon one of the youths. The latter must neither resent it nor show any sign of being hurt, which would only result in his receiving worse treatment. The old men also make the youths undergo severe manual labour, such as that of cutting down and rolling over heavy logs, and a favourite test is to order a few of them to go into the water and bring a crocodile to land. Finally, when the old men are satisfied with the conduct of the youths, they show them the sacred bull-roarer, which is called *Biddi-biduba*, telling them on no account to allow their younger brothers or any women to see it. The youths are each provided with one of these which they take out into the bush and secrete in a safe place. Unlike what happens in most other tribes, the sacred stick is not kept, but at the end of two or three weeks it is broken and buried in the ground. The women call the stick, or rather the noise associated with it, *Eruba*, and believe that this is the voice of a spirit who has come down from the sky and is carrying the youths away into the bush from which they will return initiated men. With the exception of this tribe, all of those occupying the central and northern central area of the continent practise the two important rites of circumcision and subincision.[1]

[1] Curiously the Arunta tribe has a tradition relating to a number of individuals who were taken away to the north under the leadership of an Alcheringa ancestor named Kukaitcha. They travelled on until they came into the country of the salt water, and there they stayed and remained always uncircumcised.

In the Urabunna tribe a man who stands in the relationship of *kadnini* (paternal grandfather) to the boy seizes hold of him and puts his hand over the boy's mouth, telling him to remain silent. Placing string round the boy's neck, the old man takes him away to the camp. Here he is made to lie down and is covered up while the lubras dance in front of the men. All night long the old man keeps watch over the boy, and at daylight, after the women have once more danced, he ties the boy's hair up with string which has been provided for the purpose by the father. Then the boy is formally shown to the lubras, the old man with the boy running round and round them shouting "*Wo! Wo!*" Suddenly they dart off into the scrub. That day the two start away to visit distant groups and invite them to come in to the ceremony. Each time they approach a camp [1] the old man takes the boy by the arm and leads him up, while the strangers, understanding exactly what is taking place, shout out, "*Pau! Pau!*"

On the way back they gather together the various groups, and for a time the lubras accompany them, but are left behind at a place some distance from the main camp. On the way back the men, after the women have been left behind, perform a few sacred ceremonies in the camp at night-time. For the first time the boy sees one of these and learns anything about the secret matters of the tribe concerned with the totemic ancestors. Some miles away from the home camp the old man tells the boy to make a big smoke so as to let his father and the other men know that he is returning. At the camp the women sit a little distance behind the men, and the boy, approaching, walks past the men and sits down close to the women. Then two old men who are *kadnini* (grandfather) to the boy come up, take the string from his head, and lead him off by a roundabout way to the men's camp. That night and the succeeding one singing goes on without ceasing, and totemic ceremonies are performed, some associated with local groups and others with those to which some of the strangers belong. Then the boy is taken a little distance away while the stone knife [2] is

[1] Travelling on an errand such as this the man and boy are perfectly safe. In regard to this immunity from attack, even in a strange country, there are certain fixed rules amongst the natives. Any one carrying a sacred stick or Churinga is for the time being sacred and must on no pretence be injured. When an old man is seen with a youth travelling from place to place, the natives at once understand what is happening, and would not think of molesting them. Since the advent of the white man a letter, or, as the natives call it, a "paper yabber," carried in a forked stick is as safe a passport as a Churinga.

[2] This is often only a sharp chip of quartzite, or, when procurable, the natives prefer a splinter of glass.

made ready by the *kawkuka* (mother's brother) and *nuthi* (elder brother). After this the boy is brought back, the singing is continued, and he is given a little food to eat.

After sunset three men, who stand in the relationship of oknia (father) to the boy, crouch down so as to form a kind of table on to which the boy is lifted by his *kawkuka* (mother's brother) and kadnini (grandfather). Fur-string is put into his mouth, and a *witiwa* (wife's brother) sits astride of his stomach. . . .

An elder brother now takes the initiated youth away into the bush and makes a small, plain wooden Churinga, which he gives the boy to carry about, telling him that it belonged to the Umbumbbuninia (the equivalent of the Alcheringa), and that he must keep swinging it. On no account is he to allow any lubra or child to see it. At times the elder brother watches over him and at others the *witiwa* (wife's brother). He is not allowed to eat *kadni*, the jew lizard (a favourite and fairly abundant food of the natives), or else it would make him sore and prevent his wound from healing. On the other hand he is supposed to make presents of it to the old men.

When he has recovered from the operation of circumcision he is brought into the men's camp, no women being allowed to see him. Early in the morning he is painted with red ochre, and later on a *kawkuka* (mother's brother) takes the string off his head. Then three men who stand to him in the relationship of *oknia* (father) crouch down so as to form a kind of table on which he is at once placed, another *oknia* performing the operation of subincision. A small piece of bark is inserted so as to keep the wound open, but is removed after a few hours, the blood being allowed to trickle down into a hole in the ground which is afterwards filled with earth. That night he is shown more sacred totemic ceremonies, and men who are *witiwa* (wife's brother) and *kadnini* (grandfather) to him come up and tell him that he is now a man and not a boy. He must not attempt to have intercourse with lubras other than his *nupa* and *piraungaru* women (lawful wives). If he does so then he will fall down dead like the stones. He is not on any account to interfere with other men's lubras.

In the morning the lubras light a fire and place green boughs upon it so as to make a smoke, in the midst of which the youth kneels down while his *kupuka* and *kakua* (younger and elder sisters) hit him on the back, the women who stand to him in the relationship of mother being close at hand to prevent, so they say, the sisters from hitting him too hard. After this he may have a wife

and takes his place amongst the initiated men at the *urathilpi* or men's camp. After a short time he must give a present of food, which is called by the special name of *katu*, to the men who assisted in the operation. These men put a little bit of meat up to his mouth, and in that way release him from the ban of silence.

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So far as the inculcation of anything like moral ideas is concerned, this, such as it is, may be said to take place always in connection with initiation, but it is never associated with the mention of the name of any individual who is supposed in any way whatever to sanction such moral precepts. Twanyirika of the Arunta and Unmatjera, and Katajalina of the Binbinga are merely bogeys to frighten the women and children and keep them in a proper state of subjection nor does there appear to be any evidence which would justify the hypothesis that the present ideas with regard to them are the result of degradation. Tumana of the Kaitish and Murtu-murtu of the Warramunga are merely Alcheringa ancestors who invented the Churinga, but are regarded as in no way different from, or more powerful than, scores of other such ancestors. Atnatu of the Kaitish stands by himself; before the Alcheringa was he was — in fact he made the Alcheringa; but he is, at all events according to the present ideas of the natives, in no way to be regarded as a great moral preceptor, and it may safely be said that, amongst the tribes inhabiting the whole of the central and northern central area of the continent, the natives have not the faintest idea of any such being. We searched carefully in the hope of finding traces of a belief in such a being, but the more we got to know of the details of the native beliefs, the more evident it became that they had not the faintest conception of any individual who might in any way be described as a "High God of the Mysteries."

Amongst these tribes the injunctions which are laid upon the novice at the time of his initiation are, speaking generally, the following: —

(1) That he must obey his elders and not quarrel with them.

(2) That he must not eat certain foods, but must provide food for individuals who stand in a certain relationship to him.

(3) That he must not attempt to interfere with women who have been allotted to other men, or belong to groups with the individuals of which it is not lawful for him to have marital relations.

(4) That he must on no account reveal any of the secret matters connected with the totems to the women and children. It will be seen that in each instance (except to a certain extent, the third one)

insistence upon the carrying out of these precepts is clearly a matter of interest to the older men. In regard to the third, whilst the carrying out of this is of mutual advantage, yet at the same time it is of special advantage to the older men because, owing to the curious system of betrothal in vogue amongst these tribes, the younger women pass into their possession, and the only lubra that a young man can probably obtain will be the widow of a dead elder brother.

So far as anything like moral precepts are concerned in these tribes — to which of course our remarks alone have reference — it appears to us to be most probable that they have originated in the first instance in association with the purely selfish idea of the older men to keep all the best things for themselves, and in no case whatever are they supposed to have the sanction of a superior being.

7. INHERITANCE

In the Arunta nation every individual has not only his own personal chattels, weapons, and implements of various kinds, but he also has sacred objects such as Churinga, which, to a certain extent, are regarded as his property, though they are kept in the sacred storehouse of the local group of which he is a member. They are under the charge of the headman, and he does not touch them without the consent of the latter. These Churinga belonged to ancestors, and with some of them sacred ceremonies are associated. His own chattels he may, if he feel so disposed, give away during his lifetime, though after his death there are only certain special individuals who may inherit them. On the other hand it is quite otherwise with the Churinga and the ceremonies associated with them; they are very much like the beginnings of entailed property and must descend along a certain line, and at no time has their owner the right to part with them save along this line. If the man has a son of mature age, then on the death of the parent the son will take charge of them — the eldest son if there be more than one. If, however, the son be a mere boy, they are taken over by a younger brother (blood or tribal) of the dead man until such time as the son is mature. If there be no son at all then they pass permanently into the brother's possession, and will in due time descend to his son. In the case of a woman, though she has a *Churinga nanja*, she never sees it, and on her death it is handed over to a younger brother. If she has no brother-in-blood, the old men who stand to her in the relationship of *okina* (father) and *arunga*

(grandfather) decide upon some tribal brother, younger than herself, to whom it is given. The woman may, of course, be the reincarnation of a celebrated Alcheringa ancestor, in which case there will be some special ceremony associated with the Churinga, the right to perform which, as in all such cases, will go with the Churinga.[1] Not only is there a considerable amount of repute associated with the possession of a large number of Churinga and ceremonies, but there is also the material advantage that young men who are shown such ceremonies for the first time have to present the owner of them with an offering of food.

In all cases it will be seen that the Churinga always remain in the possesssion of individuals belonging to the one moiety of the tribe; hence the fact that the woman's Churinga does not descend to her son, but to a brother. If it descended to her son, then, as descent is counted in the paternal line, the Churinga would pass into the possession of a man of the moiety to which she does not belong.

The same conditions apply in the case of the Kaitish and Unmatjera tribes, but when we pass north from these into the Warramunga there is no such number of Churinga, nor does the individual have a proprietary right in certain sacred ceremonies. These belong to the group as a whole, and this again is to be associated with the fact that each totemic group has one great ancestor who performed the ceremonies connected with the group. He also left behind him the spirit individuals who are now reincarnated, but who, unlike the ancestors of the Arunta tribe, did not themselves perform ceremonies, and hence their living representatives have no individual association with or proprietary rights in them. A man may possess one or two Churinga, but these will descend in the usual way along with his chattels.

In the Warramunga, Walpari, Wulmala, Tjingilli, Umbaia, and Binbinga tribes, after a man's death his chattels pass into the possession of men who are his mothers' brothers or his daughters' husbands — that is everything goes to men of the moiety of the tribe to which the dead man's mother belonged. With the solitary exception of their yam, or digging-sticks, the women are not allowed to take anything away at all.

What happened in the case of a Warramunga man who died during the time of our visit will serve to illustrate the matter. As soon as ever the death occurred the man's *mia-mia*, or shelter of boughs was torn down and destroyed. His few chattels were

[1] For further details, see "Native Tribes of Central Australia," p. 154.

gathered together and taken charge of by a Thakomara woman, his mother, or, in this instance, mother's sister. The next morning, while the mourning ceremonies were being carried on, the dead man's chattels were brought by the Thakomara woman to a group of men composed of two Tjapeltjeris, one Tjupila, one Thapanunga, and an elder and younger Thakomara. The women placed them on the knees of the elder Thakomara and then retired.

The old man opened up the bundle, which contained all the worldly possessions of the dead man. The complete list of these was as follows: — Three boomerangs, two clubs, three *pitchis*, one tomahawk, one hair-girdle, one vegetable-fibre girdle, one knife, and a common-looking piece of stone wrapped up in bark. The old man examined this last carefully but could evidently make nothing of it, and it was simply left on the ground when they went away as of no importance. They did not appear to be afraid lest it should possess or be able to work evil magic of some kind in consequence of its having been carried about by the dead man. There were no Churinga, nor indeed anything of a sacred nature. The old Thakomara asked the younger one what things he would take, urging him to take the whole lot, in the usual polite way of the natives, being of course fully aware that he would do no such thing. It ended in the younger man taking as his share the clubs and boomerangs, and the elder man everything else, including the most valuable thing, the tomahawk, an iron one which we had lately presented to the dead man. The younger Thakomara man told us that, according to custom, he would present the weapons which fell to his share to other Thakomara men younger than himself. The old Thakomara took his share to his *mia-mia* and retained them there; being a very old man he was not supposed to distribute them. In this way it will be seen that there is a regular circulation of things amongst the various groups. The Tjunguri man's things descend to a Thakomara; a Thakomara man's things go to a Thapanunga; a Thapanunga man's things go to a Tjambin; and finally, a Tjambin's things go to a Tjunguri.

Chapter VIII

THE POINT BARROW ESKIMO[1]

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1. PSYCHICAL CHARACTERISTICS

As a rule they are quick-witted and intelligent, and show a great capacity for appreciating and learning useful things, especially mechanical arts. In disposition they are light-hearted and cheerful, not easily cast down by sorrow or misfortune, and though sometimes quick-tempered, their anger seldom lasts long.[2] They have a very keen sense of humor, and are fond of practical jokes, which they take in good part, even when practiced on themselves. They are generally peaceable. We did not witness a single quarrel among the men during the two years of our stay, though they told us stories of fatal quarrels in former years, in which firearms were used. Liquor may have been the cause of these fights, as it is said to have been of the only suicide I ever heard of among them, which I am informed by Capt. E. E. Smith, the whaling master already referred to, occurred in 1885 at Nuwŭk. Disagreements between man and wife, however, sometimes lead to blows, in which the man does not always get the best of it.

When the station was first established many of the natives began pilfering from our stores, but they soon learned that by so doing they cut themselves off from the privilege of visiting the station and enjoying the opportunity for trading which it afforded, and were glad to promise to refrain from the practice. This promise was very well observed, though I think wholly from feelings of self-interest, as the thieves when detected seemed to have no feeling of shame. Some, I believe, never yielded to the temptation. There

[1] [By John Murdoch. Reprinted, by permission, from the 9th Annual Report of the Bureau of American Ethnology (The Smithsonian Institution). A bibliography of Eskimo ethnography by Mr. Murdoch is found at pp. 21–25 of this report. This list is referred to for complete titles of the works which are entered in the notes which follow.]

[2] *Holm* calls the East Greenlanders "et meget livligt Folkefærd." "Geogr. Tidskrift," vol. 8, p. 96.

was seldom any difficulty in obtaining restitution of stolen articles, as the thief's comrades would not attempt to shield him, but often voluntarily betrayed him. They acknowledged that there was considerable thieving on board of the ships, but the men of Utkiávwĭñ tried to lay the blame on the Nuwŭk people, and we may suppose that the charge was reciprocated, as was the case regarding the theft of the *Plover's* sails.[1] We also heard of occasional thefts among themselves, especially of seals left on the ice or venison buried in the snow, but men who were said to be thieves did not appear to lose any social consideration.

Robbery with violence appears to be unknown. We never saw or heard of the "burglar-alarm" described by Dr. Simpson,[2] which I am inclined to believe was really a "demon trap" like that described by Lieut. Ray.

They are in the main truthful, though a detected lie is hardly considered more than a good joke, and considerable trickery is practiced in trading. For instance, soon after the station was established they brought over the carcass of a dog, with the skin, head, feet, and tail removed, and attempted to sell it for a young reindeer; and when we began to purchase seal-oil for the lamps one woman brought over a tin can nearly filled with ice, with merely a layer of oil on top.

Clothing and other articles made especially for sale to us were often very carelessly and hastily made, while their own things were always carefully finished.[3]

Their affection for each other, especially for their children, is strong, though they make little show of grief for bereavement, and their minds are easily diverted by amusements. I am inclined to believe, however, from some cases I have observed, that grief is deeper and more permanent than superficial appearances would indicate.

Their curiosity is unbounded, and they have no hesitation in gratifying it by unlimited questioning. All who have read the accounts of the Eskimo character given by explorers in other parts

[1] *Simpson*, "Observations on the Western Eskimo" (London, 1875), p. 248.

[2] *Op. cit.*, p. 247.

[3] Compare *Nordenskiöld's* experience in Siberia. The "Chukches" sold him skinned foxes with the head and feet cut off for hares ("Vega," vol. 1, p. 448), young ivory gulls for ptarmigan, and a dog's skull for a seal's (vol. 2, p. 137). Besides, "While their own things were always made with the greatest care, all that they did especially for us was done with extreme carelessness" (*ibid.*). The Eskimos at Hotham Inlet also tried to sell Capt. Beechey fishskins sewed together to represent fish. ("Voyage," p. 285.)

of the Arctic regions will recognize this as a familiar trait. We also found the habit of begging at first quite as offensive among some of these people as other travelers have found it, but as they grew better acquainted with us they ceased to beg except for trifling things, such as a chew of tobacco or a match. Some of the better class never begged at all. Some of them seemed to feel truly grateful for the benefits and gifts received, and endeavored by their general behavior, as well as in more substantial ways, to make some adequate return. Others appeared to think only of what they might receive.

Hospitality is a universal virtue. Many of them from the beginning of our acquaintance with them, showed the greatest friendliness and willingness to assist us in every way, while others, especially if there were many of them together, were inclined to be insolent, and knives were occasionally drawn in sudden fits of passion. These "roughs," however, soon learned that behavior of this sort was punished by prompt ostracism and threats of severer discipline, and before the first nine months were past we had established the most friendly relations with the whole village at Cape Smyth. Some of those who were at first most insolent became afterwards our best friends. Living as these people do at peace with their neighbors, they would not be expected to exhibit the fierce martial courage of many other savages, but bold whalemen and venturous ice-hunters can not be said to lack bravery.

In their dealings with white men the richer and more influential among them at least consider themselves their equals if not their superiors, and they do not appreciate the attitude of arrogant superiority adopted by many white men in their intercourse with so-called savages. Many of them show a grace of manner and a natural delicacy and politeness which is quite surprising. I have known a young Eskimo so polite that in conversing with Lieut. Ray he would take pains to mispronounce his words in the same way as the latter did, so as not to hurt his feelings by correcting him bluntly.[1]

2. TRIBAL PHENOMENA

We were unable to discover among these people the slightest trace of tribal organization or of division into gentes, and in this our observations agree with those of all who have studied the

[1] Compare "Vega," vol. 1, p. 489. The Chukches were "so courteous as not to correct but to adopt the mistakes in the pronunciation or meaning of words that were made on the *Vega*."

Eskimos elsewhere. They call themselves as a race "In'uĭn," a term corresponding to the "Inuit" of other dialects, and meaning "people," or "human beings." Under this name they include white men and Indians as well as Eskimo, as is the case in Greenland and the Mackenzie River district, and probably also everywhere else, though many writers have supposed it to be applied by them only to their own race.

They have however special names for the former two races. The people of any village are known as "the inhabitants of such and such a place;" for instance, Nuwŭ'ñmiun, "the inhabitants of the point;" Utkiavwĭñmiun, "the inhabitants of Utkiávwĭñ;" Kuñmiun (in Greenlandic "Kungmiut"), "the people who live on the river." The people about Norton Sound speak of the northern Eskimo, especially those of Point Barrow and Cape Smyth, as "Kûñmû'dlĭñ," which is not a name derived from a location, but a sort of nickname, the meaning of which was not ascertained. The Point Barrow natives do not call themselves by this name, but apply it to those people whose winter village is at Demarcation Point (or Herschel Island). This word appears in the corrupted form "Kokmullit," as the name of the village at Nuwŭk on Petroff's map. Petroff derived his information regarding the northern coast at second-hand from people who had obtained their knowledge of names, etc., from the natives of Norton Sound.

The people of the two villages under consideration frequently go backward and forward, sometimes removing permanently from one village to the other, while strangers from distant villages sometimes winter here, so that it was not until the end of the second year, when we were intimately acquainted with everybody at Utkiávwĭñ, that we could form anything like a correct estimate of the population of this village.[1] This we found to be about 140 souls. As well as we could judge, there were about 150 or 160 at Nuwŭk. These figures show a great decrease in numbers since the end of 1853, when Dr. Simpson[2] reckoned the population of Nuwŭk at 309. During the 2 years from September, 1881, to August, 1883, there were fifteen deaths that we heard of in the village of Utkiávwĭñ alone, and only two children born in that period survived. With this ratio between the number of births and deaths, even in a period of comparative plenty, it is difficult to see how the race can

[1] See "Approximate Census," etc., Report of Point Barrow Exp., p. 49.

[2] *Op. cit.*, p. 237.

escape speedy extinction, unless by accessions from without, which in their isolated situation they are not likely to receive.[1]

3. DOMESTIC LIFE

Marriage. — As far as we could learn, the marriage relation was entered upon generally from reasons of interest or convenience, with very little regard for affection, as we understand it, though there often appeared to be a warm attachment between married people. A man desires to obtain a wife who will perform her household duties well and faithfully, and will be at the same time an agreeable companion, while he often plans to marry into a rich or influential family. The woman, on the other hand, appears to desire a husband who is industrious and a good hunter. There were, nevertheless, some indications that real love matches sometimes took place. Marriages are usually arranged by the parents of the contracting parties, sometimes when the principals are mere children. We knew of one case when a young man of about twenty-two offered himself as the prospective husband of a girl of eight or ten, when she should reach a marriageable age. This practice of child betrothal seems to be practically universal among the Eskimo everywhere.[2]

Dr. Simpson, in describing the marriage customs at Point Barrow, says:

> The usual case is, that as soon as the young man desires a partner and is able to support one, his mother selects a girl according to her judgment or fancy, and invites her to the hut, where she first takes the part of a "kivgak" or servant, having all the cooking and other kitchen duties to perform during the day, and returns to her home at night. If her conduct proves satisfactory, she is further invited to become a member of the family.[3]

We only knew this to be done on one occasion; and on the contrary knew of several cases where the bridegroom became a member of the wife's family.

[1] *Petroff's* estimate (Report, etc., p. 4) of the number of natives on this part of the Arctic coast is much too large. He gives the population of "Ootiwakh" (Utkiávwĭñ) as 225. Refuge Inlet (where there is merely a summer camp of Utkiavwĭñmiun), 40, and "Kokmullit," 200. The supposed settlement of 50 inhabitants at the Colville River is also a mere summer camp, not existing in the winter.

[2] Compare *Crantz*, vol. 1, p. 159 (Greenland); *Kumlien*, "Contributions," p. 164 (Cumberland Gulf); *Hall*, "Arctic Researches," p. 567 (Baffin Land); *Parry*, "2nd Voyage," p. 528 (Fury and Hecla Straits); *Schwatka*, "Science," vol. 4, No. 98, p. 544 (King William's Land); *Gilder*, "Schwatka's Search," p. 250 (Hudson's Bay); *Franklin*, "First Exp.," vol. 2, p. 41 (Chesterfield Inlet); *Hooper*, "Tents," etc., p. 209 (Plover Bay); *Nordenskiöld*, "Vega," vol. 2, p. 26 (Pitlekaj).

[3] *Op. cit.*, p. 252.

One youth, who had had his lips pierced for the labrets just previously to our arrival, was, we soon learned, betrothed to a young girl at Nuwŭk. This girl frequently came down from Nuwŭk and visited her lover's family, staying several days at a time, but we could not discover that she was treated as a servant. She went with them to the spring deer hunt, but we were distinctly given to understand that the young couple would not be married till after the return from this hunt. When the season came for catching reindeer fawns, the couple started off together, with sled and dogs and camp equipage in pursuit of them, and always afterwards were considered as man and wife.

Most of the marriages took place before we heard of them, so that we had no opportunity for learning what ceremony, if any, occurred at the time. Some of the party, however, who went over to make a visit at Utkiávwĭñ one evening, found the house full of people, who were singing and dancing, and were told that this was to celebrate the marriage of the daughter of the house. Marriage ceremonies appear to be rare among the Eskimo. A pretended abduction, with the consent of the parents, is spoken of by Bessels at Smith Sound [1] and Egede in Greenland (p. 142), and Kumlien was informed that certain ceremonies were sometimes practiced at Cumberland Gulf.[2] Elsewhere I have not been able to find any reference to the subject. A man usually selects a wife of about his own age, but reasons of interest sometimes lead to a great disparity of age between the two. I do not recollect any case where an old man had a wife very much younger than himself, but we knew of several men who had married widows or divorced women old enough to be their mothers,[3] and in one remarkable case the bride was a girl of sixteen or seventeen, and the husband a lad apparently not over thirteen, who could barely have reached the age of puberty.

This couple were married late in the winter of 1882–'83, and immediately started off to the rivers, deer hunting, where the young husband was very successful. This union, however, appeared to have been dissolved in the summer, as I believe the girl was living with another and older man when we left the station. In this case, the husband came to live with the wife's family.

As is the case with most Eskimo, most of the men content them-

[1] "Naturalist," vol. 18, pt. 9, p. 877.
[2] "Contributions," p. 16.
[3] Compare *Holm's* observations in East Greenland — "idet et ganske ungt Menneske kan være gift med en Kone, som kunde være hans Moder." "Geografisk Tidskrift," vol. 8, p. 91.

selves with one wife, though a few of the wealthy men have two each. I do not recollect over half a dozen men in the two villages who had more than one wife each, and one of these dismissed his younger wife during our stay. We never heard of a case of more than two wives. As well as we could judge, the marriage bond was regarded simply as a contract entered into by the agreement of the contracting parties and, without any formal ceremony of divorce, easily dissolved in the same way, on account of incompatibility of temper, or even on account of temporary disagreements.

We knew of one or two cases where wives left their husbands on account of ill treatment. One of these cases resulted in a permanent separation, each of the couple finally marrying again, though the husband for a long time tried his best to get his wife to come back to him. In another case, where the wife after receiving a beating ran away to Nuwŭk, and, as we were told, married another man, her first husband followed her in a day or two and either by violence or persuasion made her come back with him. They afterwards appeared to live together on perfectly good terms.

On the other hand, we know of several cases where men discarded wives who were unsatisfactory or made themselves disagreeable. For instance, the younger Tuñazu, when we first made his acquaintance, was married to a widow very much his senior, who seemed to have a disagreeable and querulous temper, so that we were not surprised to hear in the spring of 1882 that they were separated and Tuñazu married to a young girl. His second matrimonial venture was no more successful than his first, for his young wife proved to be a great talker. As he told us: "She talked all the time, so that he could not eat and could not sleep." So he discarded her, and when we left the station he had been for some time married to another old widow.

In the case above mentioned, where the man with two wives discarded the younger of them, the reason he assigned was that she was lazy, would not make her own clothes, and was disobedient to the older wife, to whom he was much attached. As he said, Kakaguna (the older wife) told her, "Give me a drink of water," and she said, "No!" so Kakaguna said, "Go!" and she went. He did not show any particular concern about it.

Dr. Simpson says, "A great many changes take place before a permanent choice is made;" and again, "A union once apparently settled between parties grown up is rarely dissolved."[1] And this agrees with our experience. The same appears to have been the

[1] *Op. cit.*, p. 253.

case in Greenland. Crantz [1] says, "Such quarrels and separations only happen between people in their younger years, who have married without due forethought. The older they grow, the more they love one another."

Easy and unceremonious divorce appears to be the usual custom among Eskimo generally, and the divorced parties are always free to marry again.[2] The only writer who mentions any ceremony of divorce is Bessels, who witnessed such among the so-called "Arctic Highlanders" of Smith Sound ("Naturalist," vol. 18, pt. 9, p. 877). Dr. Simpson, in the paragraph referred to above, says that "A man of mature age chooses a wife for himself and fetches her home, frequently, to all appearance, much against her will." The only case of the kind which came to our notice was in 1883, when one of the Kĭlauwitawĭñ men attempted by blows to coerce Adwû'na, an Utkiávwĭñ girl, to live with him, but was unsuccessful.

A curious custom, not peculiar to these people, is the habit of exchanging wives temporarily. For instance, one man of our acquaintance planned to go to the rivers deer hunting in the summer of 1882, and borrowed his cousin's wife for the expedition, as she was a good shot and a good hand at deer hunting, while his own wife went with his cousin on the trading expedition to the eastward. On their return the wives went back to their respective husbands.

The couples sometimes find themselves better pleased with their new mates than with the former association, in which case the exchange is made permanent. This happened once in Utkiávwĭñ to our certain knowledge. This custom has been observed at Fury and Hecla Straits,[3] Cumberland Gulf,[4] and in the region around Repulse Bay, where it seems to be carried to an extreme.

According to Gilder [5] it is a usual thing among friends in that region to exchange wives for a week or two about every two months. Among the Greenlanders the only custom of the kind mentioned is

[1] Vol. 1, p. 160.

[2] "They often repudiate and put away their wives, if either they do not suit their humors, or else if they are barren, . . . and marry others." *Egede*, "Greenland," p. 143. Compare also *Crantz*, vol. 1, p. 160; *Parry*, "2nd Voyage," p. 528 (Fury and Hecla Straits); *Kumlien*, "Contributions," p. 17 (Cumberland Gulf); and *Hooper*, "Tents," etc., p. 100 — "repudiation is perfectly recognized, and in instances of misconduct and sometimes of dislike, put in force without scruple or censure. . . . The rejected wife . . . does not generally wait long for another husband;" (Plover Bay). Compare also *Holm*, "Geografisk Tidskrift," vol. 8, pp. 91–92, where he gives an account of marriage and divorce in east Greenland, remarkably like what we observed at Point Barrow.

[3] *Parry*, "2nd Voyage," p. 528.

[4] *Kumlien*, "Contributions," p. 16.

[5] "Schwatka's Search," p. 197.

the temporary exchange of wives at certain festivals described by Egede.[1]

Holm also describes "the game of putting out the lamps," or "changing wives," as a common winter sport in East Greenland. He also, however, speaks of the temporary exchange of wives among these people much as described elsewhere.[2]

I am informed by some of the whalemen who winter in the neighborhood of Repulse Bay, that at certain times there is a general exchange of wives throughout the village, each woman passing from man to man till she has been through the hands of all, and finally returns to her husband. All these cases seem to me to indicate that the Eskimo have not wholly emerged from the state called communal marriage, in which each woman is considered as the wife of every man in the community.

Standing and treatment of women. — The women appear to stand on a footing of perfect equality with the men both in the family and in the community. The wife is the constant and trusted companion of the man in everything except the hunt, and her opinion is sought in every bargain or other important undertaking.[3]

Dr. Simpson's description[4] of the standing of the women at Point Barrow in his time is so true at the present day that I may be pardoned for quoting the whole of it:

> A man seems to have unlimited authority in his own hut, but, as with few exceptions his rule is mild, the domestic and social position of the women is one of comfort and enjoyment. As there is no affected dignity or importance in the men, they do not make mere slaves and drudges of the women; on the contrary, they endure their full share of fatigue and hardship in the coldest season of the year, only calling in the assistance of the women if too wearied themselves to bring in the fruits of their own industry and patience; and at other seasons the women appear to think it a privation not to share the labors of the men. A woman's ordinary occupations are sewing, the preparation of skins for making and mending, cooking, and the general care of the supplies of provisions. Occasionally in the winter she is sent out on the ice for a seal which her husband has taken, to which she is guided by his footmarks; and in spring and summer she takes her place in the boat if required.

The statement in the first sentence that the husband's rule is mild is hardly consistent with that on the following page that "obedience seems to be the great virtue required, and is enforced by blows when necessary, until the man's authority is established."

[1] "Greenland," p. 139. [2] "Geogr. Tids.," vol. 8, p. 92.

[3] Compare *Parry*, "2nd Voyage," pp. 526–528, *Nordenskiöld* ("Vega," vol. 1, p. 449): The women are "treated as the equals of the men, and the wife was always consulted by the husband when a more important bargain than usual was to be made." — (Pitlekaj.) This statement is applicable, word for word, to the women of Point Barrow.

[4] *Op. cit.*, p. 252.

According to our experience the first statement is nearer the truth. We heard of few cases of wife-beating, and those chiefly among the younger men. Two brothers, who habitually ill-treated their wives, were looked upon with disfavor, by some of our friends at least. We heard of one case where a stalwart wife turned the tables on her husband who attempted to abuse her, giving him a thorough beating and then leaving his house.

Wife beating was not uncommon among the Greelanders.[1] We did not learn whether a woman brought anything like a dowry, but Simpson[2] says: "The woman's property, consisting of her beads and other ornaments, her needlecase, knife, etc., are considered her own; and if a separation takes place the clothes and presents are returned and she merely takes away with her whatever she brought." According to Crantz[3] a widow in Greenland had no share of her husband's property, but owns only what she brought with her, and I am inclined to believe that this is the case at Point Barrow.

One widow of my acquaintance, who appeared to have no relatives in the village, was reduced almost to beggary, though her husband had been quite well-to-do. All his property and even his boy were taken from her by some of the other natives. Widows who have well-to-do relatives, especially grown-up sons, are well taken care of and often marry again. According to Captain Parry,[4] unprotected widows were robbed at Iglulik.

Children. — From the small number of births which occurred during out stay at Point Barrow, we were able to ascertain little in regard to this subject. When a woman is about to be confined, she is isolated in a little snow hut in winter or a little tent in summer, in which she remains for some time — just how long we were unable to learn. Captain Herendeen saw a pregnant woman in Utkiávwĭñ engaged, on March 31, in building a little snow house, which she told him was meant for her confinement, but she had evidently somehow miscalculated her time, as her child was not born till much later, when the people had moved into the tents. She and her child lived in a little tent on the beach close to her husband's tent, evidently in a sitting position, as the tent was not large enough for her to lie down in. Her husband was desirous of going off on the summer deer hunt, but, under the circumstances, custom forbade his leaving the neighborhood of the village till the ice at sea

[1] See *Egede*, p. 144, "for according to them it signifies nothing that a man beats his wife."

[2] *Op. cit.*, p. 253. [3] Vol. 1, p. 165. [4] "2nd Voyage," p. 522.

broke up. The same custom of isolating the women during childbirth has been observed by Kumlien and Boas at Cumberland Gulf,[1] and in Greenland the mother was not allowed to eat or drink in the open air.[2] Lisiansky describes a similar practice in Kadiak in 1805,[3] and Klutschak also notes it among the Aivillirmiut.[4]

The custom of shutting up the mother and child in a snow house in winter must be very dangerous to the infant, and, in fact, the only child that was born in winter during our stay lived but a short time. Capt. Herendeen visited this family at Nuwŭk shortly after the death of the child, and saw the snow house in which the woman had been confined. He was about to take a drink of water from a dipper which he saw in the iglu, but was prevented by the other people, who told him that this belonged to the mother and that it was "bad" for anyone else to use it. In Greenland the mother had a separate water pail.[5] For a time, our visitors from Utkiávwĭñ were very much afraid to drink out of the tin pannikin in our washroom, for fear it had been used by Niăksăra, a woman who had recently suffered a miscarriage. One man told us that a sore on his face was caused by his having inadvertently done so. This same woman was forbidden to go out among the broken ice of the land floe, during the spring succeeding her miscarriage, though she might go out on the smooth shore ice. Her husband also was forbidden to work with a hammer or adz or to go seal-catching for some time after the mishap.

Children are nursed until they are 3 or 4 years old, according to what appears to be the universal habit among Eskimo, and which is probably due, as generally supposed, to the fact that the animal food on which the parents subsist is not fit for the nourishment of young children. The child is carried naked on the mother's back under her clothes, and held up by the girdle, tied higher than usual. When she wishes to nurse it, she loosens her girdle and slips it round to the breast.

According to Capt. Holm,[6] in East Greenland, "De opvoxe i den mest ubundne Frihed. Forældrene nære en ubeskrivelig Kjærlighed til dem og straffe dem derfor aldrig, selv om de ere nok saa gjenstridige. Man maa imidlertid beundre, hvor velopdragne de smaa alligevel ere."

[1] "Contributions," p. 28, and "Central Eskimo," p. 610.
[2] *Egede*, p. 192; *Crantz*, vol. 1, p. 215, and *Rink*, "Tales," etc., p. 54.
[3] "Voyage," p. 200.
[4] "Als Eskimo," etc., p. 199.
[5] *Egede*, p. 192; *Crantz*, Vol. 1, p. 215, "no one else must drink out of their cup;" and *Rink*, "Tales and Traditions," p. 54.
[6] "Geografisk Tidskrift," vol. 8, p. 91.

Parry speaks still more strongly:[1]

> The affection of parents for their children was frequently displayed by these people, not only in the mere passive indulgence and abstinence from corporal punishment for which Esquimaux have been before remarked, but by a thousand playful endearments also, such as parents and nurses practice in our own country. Nothing, indeed can well exceed the kindness with which they treat their children. . . . It must be confessed, indeed, that the gentleness and docility of the children are such as to occasion their parents little trouble and to render severity towards them quite unnecessary. Even from their earliest infancy, they possess that quiet disposition, gentleness of demeanor, and uncommon evenness of temper, for which in more mature age they are for the most part distinguished. Disobedience is scarcely ever known; a word or even a look from a parent is enough; and I never saw a single instance of that frowardness and disposition to mischief which, in our youth, so often requires the whole attention of a parent to watch over and to correct. They never cry from trifling accidents, and sometimes not even from very severe hurts, at which an English child would sob for an hour. It is, indeed, astonishing to see the indifference with which, even as tender infants, they bear the numerous blows they accidentally receive when carried at their mothers' backs.

I should be willing to allow this passage to stand as a description of the Point Barrow children. It is interesting to compare with these passages Nordenskiöld's account[2] of the children at Pitlekaj, who, if not as he and other writers believe, of pure Chukch blood, are at any rate of mixed Chukch and Eskimo descent:

> The children are neither chastised nor scolded. They are, however, the best behaved I have ever seen. Their behavior in the tent is equal to that of the best brought up European children in the parlor. They are not perhaps so wild as ours, but are addicted to games which closely resemble those common among us in the country. Playthings are also in use. . . . If the parents get any delicacy they always give each of their children a bit, and there is never any quarrel as to the size of each child's portion. If a piece of sugar is given to one of the children in a crowd it goes from mouth to mouth round the whole company. In the same way the child offers its father and mother a taste of the bit of sugar or piece of bread it has got. Even in childhood the Chukchs are exceedingly patient. A girl who fell down from the ship's stairs head foremost and thus got so violent a blow that she was almost deprived of hearing scarcely uttered a cry. A boy three or four years of age, much rolled up in furs, who fell down into a ditch cut in the ice on the ship's deck, and in consequence of his inconvenient dress could not get up, lay quietly still until he was observed and helped up by one of the crew.

The only extraordinary thing about the Chukch children is their large number, mentioned by the same author.[3] This looks as if the infusion of new blood had increased the fertility of the race. All authors who have described Eskimo of unmixed descent agree in regard to the generally small number of their offspring. Other

[1] "2nd Voyage," p. 529. [2] "Vega," vol. 2, p. 140.
[3] *Ibid.*, vol. 1, p. 449.

accounts of Eskimo children are to be found in the writings of Bessels,[1] Crantz,[2] Schwatka,[3] Gilder,[4] J. Simpson,[5] and Hooper.[6]

The custom of adoption is as universal at Point Barrow as it appears to be among the Eskimo generally, and the adopted children are treated by the parents precisely as if they were their own flesh and blood. Orphans are readily provided for, as there are always plenty of families ready and willing to take them, and women who have several children frequently give away one or more of them. Families that have nothing but boys often adopt a girl, and, of course, *vice versa,* and we know of one case where a woman who had lost a young infant had another given her by one of her friends.

This very general custom of giving away children, as well as the habit already mentioned of temporarily exchanging wives, rendered it quite difficult to ascertain the parentage of any person, especially as it seems to be the custom with them to speak of first cousins as "mĭlu ataúzĭk" ("one breast," that is, brothers and sisters). While a boy is desired in the family, since he will be the support of his father when the latter grows too old to hunt, a girl is almost as highly prized, for not only will she help her mother with the cares of housekeeping when she grows up, but she is likely to obtain a good husband who may be induced to become a member of his father-in-law's family.[7]

(*a*) RIGHTS AND WRONGS

I have already spoken of the feelings of these people in regard to offenses against property and crimes of violence. As to the relations between the sexes there seems to be the most complete absence of what we consider moral feelings. Promiscuous sexual intercourse between married or unmarried people, or even among children, appears to be looked upon simply as a matter for amusement. As far as we could learn unchastity in a girl was considered nothing against her, and in fact one girl who was a most abandoned

[1] "Naturalist," vol. 18, pt. 9, p. 874.
[2] "History of Greenland," vol. 1, p. 162.
[3] "Science," vol. 4, No. 98, p. 544.
[4] "Schwatka's Search," p. 287.
[5] *Op. cit.*, p. 250.
[6] "Tents," etc., pp. 24, 201.
[7] Accounts of this custom of adoption are to be found in *Crantz*, vol. 1, p. 165; *Parry*, "2nd Voyage," p. 531; *Kumlien*, "Contributions," p. 17; *Gilder*, "Schwatka's Search," p. 247, and the passage concerning children quoted above, from *Dr. Simpson.*

and shameless prostitute among the sailors, and who, we were told, had had improper relations with some of her own race, had no difficulty in obtaining an excellent husband.

Remarks of the most indecent character are freely bandied back and forth between the sexes in public, and are received with shouts of laughter by the bystanders. Nevertheless, some of the women, especially those of the wealthier class, preserve a very tolerable degree of conjugal fidelity and certainly do not prostitute themselves to the sailors. I believe that prostitution for gain is unknown among themselves, but it is carried to a most shameless extent with the sailors of the whaling fleet by many of the women, and is even considered a laudable thing by the husbands and fathers, who are perfectly willing to receive the price of their wives' or daughters' frailty, especially if it takes the form of liquor. Dr. Simpson[1] says: "It is said by themselves that the women are very continent before marriage, as well as faithful afterward to their husbands; and this seems to a certain extent true." But he goes on to add: "In their conduct toward strangers the elderly women frequently exhibit a shameless want of modesty, and the men an equally shameless indifference, except for the reward of their partner's frailty." It seems to me that he must have been deceived by the natives concerning the first statement, since the immorality of these people among themselves, as we witnessed it, seems too purely animal and natural to be of recent growth or the result of foreign influence. Moreover, a similar state of affairs has been observed among Eskimo elsewhere, notably at Iglulik at the time of Parry's visit.[2]

(*b*) SOCIAL LIFE AND CUSTOMS

Personal habits, cleanliness, etc. — Though the idea of cleanliness among these people differs considerably from our ideas, they are as a rule far from being as filthy as they appear at first sight. Considering the difficulty of obtaining water, even for purposes of drinking, in the winter season, the iglu, unless dirty work, like the dressing of skins, etc., is going on, is kept remarkably clean. The floor and walls are scrupulously scraped and all dirt is immediately wiped up. They are particularly careful not to bring in any snow or dirt on their feet, and the snow and hoar frost is carefully brushed off from the outer garment, which is often removed before entering

[1] *Op. cit.*, p. 252. [2] "2nd Voyage," p. 529.

the room and left in the passage. They are also careful not to spit on the floor or in the passage.[1] . . .

In regard to personal cleanliness, there is considerable difference between individuals. Some people, especially the poorer women and children, are not only careless about their clothes, going about dressed in ragged, greasy, filthy garments, but seldom wash even their faces and hands, much less their whole persons. One of these women, indeed, was described by her grown-up daughter as "That woman with the black on her nose."

On the other hand most of the wealthier people appear to take pride in being neatly clad, and, except when actually engaged in some dirty work, always have their faces and hands, at least, scrupulously clean and their hair neatly combed. Even the whole person is sometimes washed in spite of the scarcity of water. Many are glad to get soap (ĭ'kăkun) and use it freely. Lieut. Ray says that his two guides, Mû'ñialu and Apaidyào, at the end of a day's march would never sit down to supper without washing their faces and hands with soap and water, and combing their hair, and I recollect that once, when I went over to the village to get a young man to start with Lieut. Ray on a boat journey, he would not start until he had hunted up a piece of soap and washed his face and hands. These people, of course, practice the usual Eskimo habit of washing themselves with freshly passed urine. This custom arises not only from the scarcity of water and the difficulty of heating it, but from the fact that the ammonia of the urine is an excellent substitute for soap in removing the grease with which the skin necessarily becomes soiled.[2] This fact is well known to our whalemen, who are in the habit of saving their urine to wash the oily clothes with. The same habit is practiced by the "Chukches" of eastern Siberia.[3] All, however, get more or less

[1] Compare *Nordenskiöld's* account of the comparative cleanliness of the Chukch dwellings at Pitlekaj: "On the other hand it may be stated that in order not to make a stay in the confined tent chamber too uncomfortable certain rules are strictly observed. Thus, for instance, it is not permitted in the interior of the tent to spit on the floor, but this must be done into a vessel which, in case of necessity, is used as a night utensil. In every outer tent there lies a specially curved reindeer horn, with which snow is removed from the clothes; the outer *pesk* is usually put off before one goes into the inner tent, and the shoes are carefully freed from snow. The carpet of walrus skins which covers the floor of the inner tent is accordingly dry and clean. Even the outer tent is swept clean and free from loose snow, and the snow is daily shoveled away from the tent doors with a spade of whalebone. Every article, both in the outer and inner tent, is laid in its proper place and so on." ("Vega," vol. 2, p. 104.)

[2] Compare *Dall*, "Alaska," p. 20.

[3] See *Nordenskiöld*, "Vega," vol. 2, p. 104.

shabby and dirty in the summer, when they are living in tents and boats. All are more or less infested with lice, and they are in the habit of searching each other's heads for these, which they eat, after the fashion of so many other savages. They have also another filthy habit — that of eating the mucus from the nostrils. A similar practice was noticed in Greenland by Egede,[1] who goes on quaintly to say: "Thus they make good the old proverb, 'What drips from the nose falls into the mouth, that nothing may be lost.'"

Salutation. — We had no opportunity of witnessing any meeting between these people and strange Eskimo, so that it is impossible to tell whether they practice any particular form of salutation on such occasions. We saw nothing of the kind among themselves. White men are saluted with shouts of "Nakurúk!" (good), and some Eskimo have learned to shake hands. They no longer practice the common Eskimo salutation of rubbing noses, but say that they once did. Sergt. Middleton Smith, of our party, informs me that he once saw a couple of natives in Capt. Herendeen's trading store give an exhibition of the way this salutation was formerly practiced.

This custom was perhaps falling into disuse as early as 1837, since Thomas Simpson,[2] in describing his reception at Point Barrow, says: "We were not, however, either upon this or any other occasion, favored with the kooniks or nose-rubbing salutations that have so annoyed other travelers." Mr. Elson, however, expressly states that the people, probably Utkiavwĭñmiun, whom he met at Refuge Inlet eleven years before, rubbed noses and cheeks with him [3] and Maguire [4] narrates how the head of the party of visitors from Point Hope saluted him. He says: "He fixed his forehead against mine and used it as a fulcrum to rub noses several times."

Healing. — As is the case with Eskimo generally, these people rely for curing disease chiefly upon the efforts of certain persons who have the power of exorcising the supernatural beings by whom the disease is caused. A large number of men, and, I believe, some women were supposed to have this power and exercise it in cases of sickness, in some instances, at least, upon the payment of a fee. These people correspond closely to the angekut of the Greenlanders and Eastern Eskimo, and the so-called "shamans" of southern Alaska, but, as far as we could see, do not possess the power and influence usually elsewhere ascribed to this class.

[1] "Greenland," p. 127.
[2] "Narrative," p. 155.
[3] "Beechy's Voyage," p. 312.
[4] "N. W. Passage," p. 385.

It was exceedingly difficult to obtain any definite information concerning these people, and we only discovered casually that such and such a person was a "doctor" by hearing that he had been employed in a certain case of sickness, or to perform some ceremony of incantation. We did not even succeed in learning the name of this class of people, who, in talking with us, would call themselves "tûktĕ," as they did our surgeon. On one occasion some of the party happened to visit the house of a sick man where one of these "doctors" was at work. He sat facing the entrance of the house, beating his drum at intervals, and making a babbling noise with his lips, followed by long speeches addressed to something down the trapdoor, bidding it "go!" We were given to understand that these speeches were addressed to a tuɐñaɐ or supernatural being.[1] Their idea only of direct treatment of disease is apparently to apply a counter-irritant by scarification of the surface of the part affected.

* * * * * * *

4. GOVERNMENT

In the family. —I can hardly do better than quote Dr. Simpson's words, already referred to (*op. cit.* p. 252), on this subject: "A man seems to have unlimited authority in his own hut." Nevertheless, his rule seems to be founded on respect and mutual agreement, rather than on despotic authority. The wife appears to be consulted, as already stated, on all important occasions, and, to quote Dr. Simpson again (*ibid.*): "Seniority gives precedence when there are several women in one hut, and the sway of the elder in the direction of everything connected with her duties seems never disputed." When more than one family inhabit the same house the head of each family appears to have authority over his own relatives, while the relations between the two are governed solely by mutual agreement.

In the village. —These people have no established form of government nor any chiefs in the ordinary sense of the word, but appear to be ruled by a strong public opinion, combined with a certain amount of respect for the opinions of the elder people, both men and women, and by a large number of traditional observances like those concerning the whale fishery, the deceased, etc., already described. In the ordinary relations of life a person, as a rule,

[1] *Dr. Simpson* says (*op. cit.*, p. 275): "Diseases are also considered to be turn'gaks."

avoids doing anything to his neighbor which he would not wish to have done to himself, and affairs which concern the community as a whole, as for instance their relations with us at the station, are settled by a general and apparently informal discussion, when the opinion of the majority carries the day. The majority appears to have no means, short of individual violence, of enforcing obedience to its decisions, but, as far as we could see, the matter is left to the good sense of the parties concerned. Respect for the opinions of elders is so great that the people may be said to be practically under what is called "simple elder rule."[1] Public opinion has formulated certain rules in regard to some kinds of property and the division of game, which are remarkably like those noticed among Eskimo elsewhere, and which may be supposed to have grown up among the ancestors of the Eskimo, before their separation.

For instance, in Greenland,[2] "Anyone picking up pieces of drift-wood or goods lost at sea or on land was considered the rightful owner of them; and to make good his possession he had only to carry them up above high-water mark and put stones upon them, no matter where his homestead might be." Now, at Point Barrow we often saw the natives dragging driftwood up to the high-water mark, and the owner seemed perfectly able to prove his claim. Lieut. Ray informs me that he has seen men mark such sticks of timber by cutting them with their adzes and that sticks so marked were respected by the other natives. On one occasion, when he was about to have a large piece of drift-timber dragged up to the station, a woman came up and proved that the timber belonged to her by pointing out the freshly cut mark. I have myself seen a native claim a barrel which had been washed ashore, by setting it up on end.

As far as we could learn, the smaller animals, as for instance, birds, the smaller seals, reindeer, etc., are the property of the hunter, instead of being divided as in some other localities, for example at Smith Sound.[3] The larger seals and walruses appeared to be divided among the boat's crew, the owner of the boat apparently keeping the tusks of the walrus and perhaps the skin. A bear, however, both flesh and skin, is equally divided among all

[1] Compare, among other instances, Capt. *Holm's* observations in East Greenland: "Som Overhoved i Huset [which is the village] fungerer den ældeste Mand, naar han er en god Fanger," etc. (Geogr. Tids., vol. 8, p. 90).

[2] *Rink*, "Tales and Traditions," p. 28. Compare also *Crantz*, vol. 1, p. 181.

[3] *Bessels*, "Naturalist," vol. 23, p. 873.

who in any way had a hand in the killing. We learned this with certainty from having to purchase the skin of a bear killed at the village, where a number of men had been engaged in the hunt. When a whale is taken, as I have already said, the whalebone is equally divided among the crews of all the boats in sight at the time of killing. All comers, however, have a right to all the flesh, blubber, and blackskin that they can cut off.[1]

Dr. Rink, in describing the social order of the ancient Greenlanders,[2] says: "Looking at what has been said regarding the rights of property and the division of the people into certain communities, in connection with the division of property into the classes just given, we are led to the conclusion that the right of any individual to hold more than a certain amount of property was, if not regulated by law, at least jealously watched by the rest of the community, and that virtually the surplus of any individual or community, fixed by the arbitrary rate which tradition or custom had assigned, was made over to those who had less." At Point Barrow, however, the idea of individual ownership appears to be much more strongly developed. As far as we could learn, there is no limit to the amount of property which an individual, at least the head of a family, may accumulate. Even though the whalebone be, as already described, divided among all the boats' crews "in at the death," no objection is made to one man buying it all up, if he has the means, for his own private use.

This has given rise to a regular wealthy and aristocratic class, who, however, are not yet sufficiently differentiated from the poorer people to refuse to associate on any terms but those of social equality. The men of this class are the umialiks, a word which appears in many corrupted forms on the coast of Western America and is often supposed to mean "chief." Dr. Simpson[3] says: "The chief men are called O-méliks (wealthy)," but "wealthy" is an explanation of the position of these men, and not a translation

[1] Compare *Rink*, "Tales," etc., p. 29: "But if an animal of the largest size, more especially a whale, was captured, it was considered common property, and as indiscriminately belonging to every one who might come and assist in flensing it, whatever place he belonged to and whether he had any share in capturing the animal or not." — ("Greenland.") *Gilder* ("Schwatka's Search," p. 190) says that on the northwest shore of Hudson Bay all who arrive while a walrus is being cut up are entitled to a share of it, though the man who struck it has the first choice of pieces. At East Cape, Siberia, the *Krause Brothers* learned: "Wird nämlich ein Walfisch gefangen, so hat jeder Ortsbewohner das Recht, so viel Fleisch zu nehmen, als er abzuschneiden vermag." — ("Geographische Blätter," vol. 5, pt. 2, p. 120).

[2] "Tales," etc., p. 29.

[3] *Op. cit.*, p. 272.

of the title, which, as we obtained it, is precisely the same as the Greenland word for *owner of a boat*, umialik (from umia(*k*), and the termination lĭk or lĭ-ñ. This is one of the few cases in which the final *k* is sounded at Point Barrow as in Greenland).

Dr. Rink has already observed [1] that the word used by Simpson "no doubt must be the same as the Greenlandish umialik, signifying owner of a boat," and as I heard the title more than once carefully pronounced at Point Barrow it was the identical word. The umialiks, as Simpson says,[2] "have acquired their position by being more thrifty and intelligent, better traders, and usually better hunters, as well as physically stronger and more daring." [3] They have acquired a certain amount of influence and respect from these reasons, as well as from their wealth, which enables them to purchase the services of others to man their boats, but appear to have absolutely no authority outside of their own families.[4] Petroff [5] considers them as a sort of "middlemen or spokesmen," who make themselves "prominent by superintending all intercourse and traffic with visitors."

This sort of prominence, however, appears to have been conferred upon them by the traders, who, ignorant of the very democratic state of Eskimo society, naturally look for "chiefs" to deal with. They pick out the best looking and best dressed man in the village and endeavor to win his favor by giving him presents, receiving him into the cabin, and conducting all their dealings with the natives through him.

[1] "Tales," etc., p. 25. [2] *Op. cit.*

[3] Compare what the *Krause Brothers* say of the "chiefs" on the Siberian coast ("Geographische Blätter," vol. 5, pt. 1, p. 29): "Die Autorität welche die obenerwähnten Männer augenscheinlich ausüben, ist wohl auf Rechnung ihres grösseren Besitzes zu setzen. Der 'Chief' is jedes Mal der reichste Mann, ein 'big man.'"

[4] See, also, *Dr. Simpson, op. cit.*, p. 273.

[5] Report, etc., p. 125.

CHAPTER IX

THE SERI INDIANS

1. INTRODUCTION

Something has been known of the Seri Indians (Seris, Ceris, Ceres, Heris, Tiburones) since the time of Coronado, yet they remain one of the least-studied tribes of North America. The first systematic investigation of the tribe was made in the course of expeditions by the Bureau of American Ethnology in 1894 and 1895; it was far from complete.

The Seri Indians are a distinctive tribe in habits, customs, and language, inhabiting Tiburon island in Gulf of California and a limited adjacent area on the mainland of Sonora (Mexico). They call themselves *Kun-kaak* or *Kmike:* their common appellation is from the Opata, and may be translated "spry." Their habitat is arid and rugged, consisting chiefly of desert sands and naked mountain rocks, with permanent fresh water in only two or three places; it is barred from settled Sonora by a nearly impassable desert. Two centuries ago the population of the tribe was estimated at several thousands, but it has been gradually reduced by almost constant warfare to barely three hundred and fifty, of whom not more than seventy-five are adult males, or warriors.

The Seri men and women are of splendid physique; they have fine chests, with slender but sinewy limbs, though the hands and especially the feet are large; their heads, while small in relation to stature, approach the average in size; the hair is luxuriant and coarse, ranging from typical black to tawny in color, and is worn long. They are notably vigorous in movement, erect in carriage, and remarkable for fleetness and endurance.

The Seri subsist chiefly on turtles, fish, mollusks, water-fowl, and other food of the sea; they also take land game, and consume cactus fruits, mesquite beans, and a few other vegetal products of their sterile domain. Most of their food is eaten raw. They

[1] [By W J McGee. Reprinted from the 17th Annual Report (Part I) of the Bureau of American Ethnology (The Smithsonian Institution) by permission of the Director.]

neither plant nor cultivate, and are without domestic animals, save dogs which are largely of coyote blood.

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2. SOCIAL ORGANIZATION

Among the Seri, as among many other aboriginal tribes, the social relations are largely esoteric; moreover, in this, as in other savage groups, the social laws are not codified, nor even definitely formulated, but exist mainly as mere habits of action arising in instinct and sanctioned by usage; so that the tribesmen could not define the law even if they would. Accordingly the Seri socialry [1] is to be ascertained only by patient observation of conduct under varying circumstances. Unfortunately, the opportunities for such observation have been too meager to warrant extended description, or anything more, indeed, than brief notice of salient points.

(*a*) CLANS AND TOTEMS

The most noticeable social fact revealed about the Seri rancherias is the prominence of the females, especially the elderwomen, in the management of everyday affairs. The matrons erect the jacales without help from men or boys; they carry the meager belongings of the family and dispose them about the habitation in conformity with general custom and immediate convenience; and after the household is prepared, the men approach and range themselves about, apparently in a definite order, the matron's eldest brother coming first, the younger brothers next, and finally the husband, who squats in, or outside of, the open end of the bower. According to Mashém's iterated explanations, which were corroborated by several elderwomen (notably the clanmother known to the Mexicans as Juana Maria) and verified by observation of the family movements, the house and its contents belong exclusively to the matron, though her brothers are entitled to places within it whenever they wish; while the husband has neither title nor fixed place, "because he belongs to another house" — though, as a matter of fact, he is frequently at or in the hut of his spouse, where he normally occupies the outermost place in the group and acts as a sort of outer guard or sentinel. Conformably to their proprietary position, the matrons have chief, if not sole, voice in extending and removing the rancheria; and such questions as that

[1] A convenient term proposed by Patton.

of the placement of a new jacal are discussed animatedly among them and finally decided by the dictum of the eldest in the group. The importance of the function thus exercised by the women has long been noted at Costa Rica and other points on the Seri frontier, for the rancherias are located and the initial jacal erected commonly by a solitary matron, sometimes by two or three aged dames; around this nucleus other matrons and their children gather in the course of a day or two; while it is usually three or four days, and sometimes a week, before the brothers and husbands skulk singly or in small bands into the new rancheria.

Quite similar is the regimentation of the family groups as indicated by the correlative privileges and duties as to placement, as well as the reciprocal rights of command and the requirements of obedience. Ordinarily (especially when the men are not about) the elderwoman of the jacal exercises unlimited privileges as to placement of both persons and property, locating the ahst, the bedding, the fire (if any), and other possessions at will, and assigning positions to the members of her family, the nubile girls receiving especial attention; she is also the arbiter of disputes, the distributor of food, etc; but in case of tumult, especially when children from other jacales are present, she may invoke the authority of the clanmother, whose powers in the rancheria are analogous to those of the younger matrons in their own jacales. Even when the men are present they take little part in the regulation of personal conduct, but tacitly accept the decision of matron or clanmother; yet in emergencies any of the women are ready to appeal for aid in the execution of their will to a brother (preferably the elder brother) of the family, or, if need be great, to the brothers of the clanmother. So far as was observed, and so far as could be ascertained through informants, these appeals are always for executive and never for legislative or judicative coöperation; but various general facts indicate that in times of stress — in the heat of the chase, in the warpath-craze, etc. — the men bestir themselves into the initiative, while the women drop into an inferior legislative place. As an illustration of the ordination in somewhat unusual circumstances, it may be noted that when the "Seri belle" (Candelaria) refused to pose for a photograph she was supported by the clanmother (Juana Maria) until the latter was placated by presents; and that when the belle refused to obey the mother's command — to the vociferous scandal of the entire group — Juana Maria appealed to Señor Encinas, as the conqueror of the tribe and hence as the virtual head of both rancho and rancheria. And when a younger

Seri maiden similarly refused to pose, and in like manner disobeyed her mother (again to the general disgust), the latter appealed to Mashém; when he, after first exacting additional presents for both girl and mother and a double amount for himself, put hands on the recalcitrant demoiselle and forced her into the pose required, despite the shrinking and tremulous terror perceptible even in the picture.

Commonly the regimentation of family, clan, and larger group appears to be indicated approximately by the placement assumed spontaneously in the idle lounging of peace and plenty. A typical placement of a small group is illustrated (in plate XIV).[1] Here the family are assembled outside the jacal, but in the relative positions which would be assumed within. The matron (a Red Pelican woman) squats in easy reach of her few and squalid possessions; on her left, *i.e.*, in the group-background and place of honor, sits the elderwoman of the rancheria (a Turtle); then comes the daughter of the family, followed by two girl-child guests of the group, the three occupying positions pertaining to chiefs or elder brothers or, in their absence, to daughters; opposite the matron sits a younger brother,[2] whose wife is a Turtle woman (daughter of the dame in the place of honor) and matron of another jacal. A few feet behind this brother (just outside the limits of the photograph reproduced, though shown on the duplicate negative) squats the husband, with his side to the group and face toward the direction of natural approach; while the place belonging to the sons of the family on the matron's right is temporarily occupied by a White Pelican girl, together with a dog, notable in the local pack for largely imported blood and correspondingly docile disposition. The place for the babe, were there one in the family, would be on the heap of odds and ends behind the matron. As in this group so in most others, the place of the sons is vacant; for the boys are at once the most restless and the most lawless members of the tribe — indeed, the striplings seem often to ignore the maternal injunctions and even to evade the rarely uttered avuncular orders, so that their movements are practically free, except in so far as they are themselves regimented or graded by strength and fleetness and success in hunting.

The *raison d'être* of the proprietorship and regimentation re-

[1] [Not reproduced here.]

[2] This man was one of those involved in the Robinson butchery on Tiburon island a few months before the picture was taken; and he was one of those executed or transported for the affair during the interval between the 1894 and 1895 expeditions.

flected in the everyday customs is satisfactorily indicated by that totemic feature of the social organization revealed in the face-painting described in earlier paragraphs (pp. 164–169);[1] these symbols evidently represent an exclusively maternal organization into clans consecrated to zoic tutelaries. The tutelaries, or totems, together with the clan names and all personal designations connected with the totems, are highly esoteric, and were not ascertained save in the few cases mentioned above.[2]

It should be observed that the indentification of kindred by the alien observer is difficult and somewhat uncertain, since the relationships recognized in Seri socialry are not equivalent to those customary among Caucasians. It was found especially difficult to identify the husband of the jacal, partly because he is commonly incongruously younger (and hence relatively smaller) than the mistress, and partly because of the undignified position of outer guard into which he is forced by the tribal etiquette. Moreover, his connection with the house is veiled by the absence of authority over both children and domestic affairs, though he exercises such authority freely (within the customary limits) in the jacales of his female relatives. There is, indeed, some question as to the clear recognition of paternity; certainly the females have no term for "my father," *i.e.*, the term is the same as that for "my mother," *em*, though the males distinguish the maternal ancestor by a suffixed syllable (*e-* "my father"; *e-ta* or *it-tah-* "my mother"), which seems to be a magnificative or an intensificative element. It is noteworthy that the kinship terminology is strikingly meager; also that while the records suggest various significant points, the material is hardly rich enough to warrant complete synthesis of the consanguineal system.

While the burden of the more permanent property pertains to the women, there is a decided differentiation of labor with a concomitant vesting of certain property in the warriors — the distinctively masculine chattels comprising arrows, quivers, bows, turtle-harpoons, etc. There are indications that the balsas, too, are regarded as masculine property. The impermanent possessions — water, food, etc. — seem to be the common property of men, women, and children, except in so far as the right is regulated by regimentation;

[1] [Referring to the pages of the original report, but not reproduced here.]

[2] The chief object of the 1895 expedition was to pursue the inquiries concerning social organization, totems, etc.; but, as mentioned elsewhere, this object was defeated by the troublous history of the tribe during the earlier part of 1895, and the consequent revival and intensification of their animosity toward aliens.

for the privileges of eating and drinking are enjoyed in the order of seniority. In the reckoning of seniority, the chief (who is commonly such in virtue of his position as nominal elder brother of a prolific dame) ranks first, and is followed by other warriors in an order affected in an undetermined way by conjugal relations as well as by their prowess or sagacity (the equivalents of age in primitive philosophy) down to an undetermined point — apparently fixed by puberty; then comes the clanmother, followed by her daughters in the order of nominal age, which is a ected by the status of spouses and the number of living offspring; finally come the children, practically in the order of their strength (which also is deemed an equivalent of age), though the girls — especially those approaching nubility — receive some advantage through the connivance of the matrons. To a considerable extent in the matter of sustentation, and to a dominant degree in the matter of appareling, the distribution of values is affected by a highly significant (though by no means peculiar) humanitarian notion of inherent individual rights — *i.e.*, every member of the family or clan is entitled to necessary food and raiment, and it is the duty of every other person to see that the need is supplied. The stress of this duty is graded partly by proximity (so that, other things equal, it begins with the nearest person), but chiefly by standing and responsibility in the group (which again are reckoned as equivalents of age), whereby it becomes the business of the first at the feast to see that enough is left to supply all below him; and this duty passes down the line in such wise as to protect the interests of the helpless infant, and even of the tribal good-for-naught or hanger-on, who may gather crumbs and lick bones within limits fixed by the tribal consensus. Beyond these limits lies outlawry; and this status arises and passes into the tribal recognition in various ways: Kolusio was outlawed for consociating with aliens, and Mashém narrowly missed the same fate at several stages of his career; the would-be grooms who fail in their moral tests are ostracized and at least semi-outlawed, and range about like rogue elephants, approved targets for any arrow, until they perish through the multiplied risks of solitude, or until some brilliant opportunity for display of prowess or generosity brings reinstatement; deformed offspring are classed as outside the human pale, even when the deformity is defined rather by occult associations than by physical features; abnormal and persistent indolence, too serious for scorn and ostracism to cure, may also outpass the tribal toleration; and, as indicated by Mashém's guarded expressions

and slight additional data, disease, mental aberration, and decrepitude are allied with indolence and deemed sufficient reason for excluding the persistently helpless from the tribal solidarity, and hence from recognized humanity — and the fate of the outlaw, even if nothing more severe than abandonment in the desert, is usually sure and swift. The entire customs of outlawry among the Seri are singularly like those of gregarious animals, including especially kine and swine in domestication. Now, studied equity in the distribution of necessaries might seem to be allied to thrift; but it is noteworthy that this is not so among the Seri, who take thought for one another but not for the morrow, who seem to have no conception of storage (save an incipient one in connection with water and the repulsive notion underlying the "second harvest"), and who habitually gorge everything in sight until their stomachs and gullets are packed — and then waste the fragments.

The division of labor which affects proprietary interests is undoubtedly affected in turn by the militant habit of the tribe and by the frequent decimation of the warriors. In general, the adult males limit their work to fighting and fishing, with occasional excursions into the hunting field; though by far the greater part of their time is spent in listless lounging or heedless slumber under the incidental guard of roaming youths and toiling women. The matrons are the real workers in the tribal hive; they are normally alert and active, passing from one simple task to another, gathering flotsam food along the beach or preparing edibles in the shadow of the jacal, with an eye ever on material possessions and children; they frequently join in hunting excursions of considerable extent; they are the chief manufacturers of apparel, utensils, and tools; and the scions of Castilian caballeros are not infrequently staggered at the sight of half a dozen Seri women "milling" a band of horses, and at intervals leaping on one to kill it with their hupfs. The masculine drones are the more petted and courted by reason of their fewness, for during a century or two, at least, the women have far outnumbered their consorts — a disproportion doubtless tending in some respects toward the disintegration of the clan system and, reciprocally, toward the firmer union of the tribe.

One of the most noteworthy extensions of feminine functions among the Seri is toward shamanism. So far as could be ascertained from Mashém and the associated matrons at Costa Rica, it is such beldams as Juana Maria who concoct the arrow "poison," compound both necromantic medicines and curative simples, cast spells on men and things, and even fabricate the stone arrow-

points and counterfeit cartridges; though unhappily the data are neither so full nor so decisive as desirable.[1]

Conformably with their prominence in proprietary affairs, the Seri matrons seem to exercise formal legislative and judicative functions; for not only do they hold their own councils for the arrangement of the domestic business of the rancherias, but they also participate prominently in the tribal councils (as explained by Mashém), and play important rôles in carrying out the decisions of such councils — as when they coöperate with war parties as decoys, or journey across their bounding desert to spy out the land of the enemy.

On the whole, it would appear that the clan organization of the Seri conforms closely with that characteristic of savagery elsewhere, especially among the American aborigines. The social unit is the maternal clan, organized in theory and faith in homage of a beast-god, though defined practically by the ocular consanguinity of birth from a common line of mothers; yet the several units are pretty definitely welded into a tribal aggregate by common feelings, identical interests, and conjugal ties. The most distinctive features brought out by the incomplete investigation are the somewhat exceptional manifestation of property right in the females, the singularly strong sense of maternal relation, and the apparent prominence of females in shamanistic practices as well as in the tribal councils.

3. TRIBAL ORGANIZATION

(*a*) CHIEFSHIP

The unformulated tribal laws of the Seri are intimately connected with leadership, which is, in turn, largely a reflection of personal characteristics; so that the tribal organization is about as variable as that of the practically autonomous herds of cattle ranging the Sonoran plains adjacent to Seriland. Indeed, just as the stock-clans enjoy a precedence on pasturage and at waterholes, determined by the valor and strength of the bulls by which they are led, so the Seri clans appear to be graded by the prowess of their masculine leaders, combined with the sortilegic success of the leaders' consorts; while, just as the leadership of the cattle shifts from band to band as the years go by, according to the fairly equal hazard of natural selection, so the clan dynasties of the human

[1] The agency of the women in applying the arrow "poison" was noted by *Hardy; cf.* p. 258 [original text].

group rise, flourish, and decline in an endless succession shaped by the chances of birth and survival under a capricious environment, by the fate of battles internecine and external, and by various other factors. The instability of the Seri organization is demonstrated by the tribal changes recorded in history, as well as by the vicissitudes within the memory of Señor Encinas and others. At the beginning of the records the Upanguayma were already exiled from Seriland proper and apparently suffering from raids of their collinguals; within a century the Guayma, also, were expatriated and nearly annihilated; then, in the early part of the present century, the Tepoka were extruded and (after a series of wars in active progress in Hardy's time) forced far up the coast to one of the poorest habitats ever occupied by any folk. So, too, throughout the Encinas régime the internal dissensions continued whenever the clans were not combined against aliens; and the veteran pioneer has seen much intratribal strife, attended by the rise and passing of many chiefs, both acknowledged and pretended, and often exercising chiefly prerogatives two or three at a time. This instability grows largely out of the fact that the essential unit is the clan, and that the tribe is nothing more than a lax aggregation; and it is measurably explained by the crude customs accompanying the choice of leaders.

As already noted, the clan organization is maternal, and the clanmother is the central figure of the group; but the executive power resides in her brothers in the order of seniority — *i.e.*, while the personal arrangement of the group is maternal, the appellate administration is fraternal. So far as could be ascertained, the form of government is clearly discriminable from that commonly styled avuncular; for, in the first place, the minor administration accompanying the control of property invests the elder-women with exceptional legislative and judicative powers, while, in the second place, there are no old men (by reason of the militant habit), so that the reverence for age so assiduously cultivated in primitive life extends to matrons much more than to men. Classed with respect to major administration, therefore, the clan may be regarded as an informal *adelphiarchy* (ἀδελφός and ἄρχος) or *adelphocracy* (ἀδελφός and κρατός). It has none of the elements of the patriarchy, since male lineage is not recognized, and can not be classed as a matriarchy, since the clanmother is administratively subordinate to her brothers; while the avuncular functions are apparently inchoate and indirect, *i.e.*, exercised only through or in conjunction with the clanmother. In short, the clan is ordi-

nated or regimented in ostensible accordance with physical power, though the real faculty is confused (after the fashion of primitive thinking generally) with mystical faculties, imputed largely on magical grounds but partly on grounds of age-reverence, etc. Now, when two or more clans combine, the basis on which the common chiefship is determined is similar to that determining the clan leadership; at the outset three factors enter, viz. (1) the seniority of the clans in the accepted tribal mythology, (2) the prowess of the respective clan leaders (always weighed in conjunction with the shamanistic potency of their consorts), and (3) the numerical strength of the respective clans; but practically, so far as can be judged from all available information, the choice really reflects physical force, since in case of doubt the strongest and bravest man becomes the eldest by virtue of his strength and bravery, while the strongest clan finds fair ground for claiming seniority in the very fact of its strength. Naturally disputes arise in the adjustment of the several relations; and in the actual analysis in council, the dispute is commonly reduced to a contest between gods and men, *i.e.*, between the claims for mystical and magical potencies on the one hand and the claims of brawn and bone on the other hand, so that strength wins, unless omens or prodigies turn the scale — which happens often enough to keep the subjective and the objective elements in fairly equal balance. Sometimes the contests are quickly settled; again they last for months, during which the tribe struggles under its weight of Cerberus heads; and repeatedly the disputes have ended in the annihilation of clans, or even in the tribal fissions attested by the recorded and traditional history of the Serian family.

The chiefship once determined, the leader bends all energies toward maintaining the position by which he is dignified and his clan exalted. He recognizes his responsibility for the welfare of the tribe — not only for success in battle and food-getting, but for stilling storms at sea, protecting the aguajes from the drought-demons, and securing all other benefits, both physical and magical; he must be aggressive yet cautious on the warpath, fleet and enduring in retreat, indomitable in the chase, bold but not reckless on the balsa, and above all panoplied and favored by the shadowy potencies of air and earth and waters; he must be the local and lowly Admirable Crichton, and his never-neglected watchward must be *noblesse oblige*. His practical devices for maintaining prestige are many and diverse; it is commonly the chief who carries the symbolic weapon, the counterfeit cartridge, the imita-

tion machete, or other charm against alien power; it is usually he who wears the white men's hat or random garment in lieu of the deer or lion mask of earlier days; and during recent years his most prized fetish, and one which practically insures the support of his fellows, is a written certificate of his chiefship from Señor Encinas, or, still better, from El Gobernador at Hermosillo. Yet he is a throneless and even homeless potentate, sojourning, like the rest of his fellows, in such jacales as his two or three or four wives may erect, wandering with season and sisterly whim, chased often by rumors of invasion or by fearsome dreams, and restrained by convention even from chiding his own children in his wives' jacales save through the intercession of female relatives.

In 1894 the head chief was reported to be on Tiburon; the putative chief of the rancheria at Costa Rica was the taciturn giant known as El Mudo; while Mashém (or Juan Estorga) was the head of one of the Pelican clans.

(*b*) ADOPTION

One of the more important factors in demotic development among primitive peoples (probably second only to interclan marriage in extending sympathy and unifying law) is adoption; and special efforts were made to obtain data relating to the subject. Direct inquiries were futile, the responses indicating that the entire subject is foreign to the thought of the tribe; but three sporadic and measurably incongruous examples of quasi adoption are worthy of record.

The most specific case is that of Lieutenant Hardy, who visited Isla Tiburon in 1826, and was fortunate in gaining the confidence of the tribe through successful medical treatment of the wife of the chief. On his second landing he was greeted with many expressions of gratitude, which were especially exuberant on the part of the daughter of the family (always a personage in Seri custom), who insisted on painting his face. He specifies:

> Not wishing to deny her the indulgence of this innocent frolic, I quietly suffered her to proceed. She mixed up part of a cake of blue color, which resembles ultramarine (and of which I have a specimen), in a small shell; in another, a white color, obtained by ground talc, and in a third was mixed a color obtained from the red flint-stone of the class which I before stated was to be found on Seal Island, and resembled cinnabar. With the assistance of a pointed stick the tender artist formed perpendicular narrow stripes down my cheeks and nose, at such distances apart as to admit of an equally narrow white line between them. With equal delicacy and skill the tops and bottoms of the white lines were finished off with a white spot. If the cartilage of my nose at the nostrils had been perforated so as to admit a small, round, white bone, five inches in length, tapering off

at both ends and rigged something like a cross-jack yard, I might have been mistaken for a native of the island. As soon as the operation was finished, the whole party set up a roar of merry laughter, and called me "Hermano, Capitan Tiburon," being the very limited extent of their knowledge of Spanish.[1]

While the lieutenant attached no significance to the painting, the procedure would seem to have been a ceremonial adoption, such as might, for example, be used in connection with a confederate clan. The description of the painting is sufficiently explicit to identify the totem with that of the Turtle clan, represented by the clanmother and the daughter of the clan at Costa Rica in 1894 (plates XVIII and XXIV)[2]; but it is noteworthy that the salutation with which the ceremony terminated, and which may be rendered "Captain-Brother of the Sharks," would seem to identify the totem with the shark rather than the turtle.[3]

The second case of adoption (if so it may be styled) was that of Señor Encinas, after his bloodiest battle, in which nearly all of the Seri warriors were left on the field. In this case there was no ceremony, or at least none remembered by the beneficiary; he was merely informed by a delegation of aged dames that thenceforth he would be regarded as a stronger and more invulnerable chief (shaman) than any member of the tribe, and hence as the tribal leader.

The third instance is still less definite, though it seems to be trustworthy. There is a widespread tradition throughout Sonora that in the course of a brush between a band of Papago hunters and a marauding bunch of Seri warriors in the mountains southeast of Cieneguilla twenty-five or thirty years ago, a Papago maiden was captured and carried off to Tiburon; and that for some years thereafter — *i.e.*, until the Papago had taken ample blood-vengeance — the intertribal animosity was exceptionally bitter. No wholly satisfactory basis for the traditions could be found among the Papago, though some of the silences of the old men were suggestive; nor was the tradition fully credited by Señor Encinas, despite its deep lodgment in the minds of some of his yeomanry. When Mashém was interrogated on different occasions, he merely shook his head in stolid silence; but when the device was adopted

[1] "Travels," p. 286. [2] [Not reproduced here.]

[3] This identification may possibly be correct; the collocation of the totem with the turtle was shaped through unwilling and perhaps misleading responses made by Mashém to inquiries in 1894 — these responses denoting a sea monster which in the beginning helped the Ancient of Pelicans to make the world by pushing from below, and which is now very good food — a description apparently fitting the turtle more closely than the other animal.

of inquiring the number of Papago children brought into the tribe through this woman he responded promptly with a snort of scorn, and followed this with the explanation that she never had children, and could not because she was an alien slave. The explanation was corroborated by clanmother Juana Maria and other matrons, with sundry expressions of contemptuous disapproval of the inquiry and scorn of the very idea that aliens could fructify within the tribe. Later, the ice being broken, Mashém intimated that the woman had recently died of old age and its consequences — doubtless as an outcast. On the whole, the direct testimony would seem to substantiate the tradition, and to supplement it with the short and simple annals of a spouseless and childless life (incredible of other tribes, but consistent with the customs of the Seri), endured for many years and ending at last in unpitied death.

Collectively the cases seem to define a germ, rather than a mature custom, of adoption. In the first case a benefactor (by means regarded as magical) was formally inducted into the reigning family; in the second case the conquering hero (through what were again regarded as magical means) was less formally recognized and venerated, even worshiped, as an all-powerful shaman; while in the third case a representative of the doughtiest alien tribe was enslaved, probably with motives akin to those expressed in the carrying of chargeless guns, the making of imitation machetes, and other fetishistic devices. Except in the first instance there is no indication of consistent custom; but since the entire history of the tribe clearly contradicts regulated adoption of aliens (and indeed affords no other example), it must be inferred that any such custom is intratribal rather than intertribal.

(*c*) MARRIAGE

The most striking and significant social facts discovered among the Seri relate to marriage customs.

As noted repeatedly elsewhere, the tribal population is preponderantly feminine, so that polygyny naturally prevails; the number of wives reaches three or possibly four, averaging about two, though the younger warriors commonly have but one, and there are always a number of spouseless (widowed) dames but no single men of marriageable age. So far as could be ascertained, no special formalities attend the taking of supernumerary wives, who are usually widowed sisters of the first spouse; it seems to be practically a family affair, governed by considerations of con-

venience rather than established regulations — an irregularity combining with other facts to suggest that polygyny is incidental, and perhaps of comparatively recent origin.

The primary mating of the Seri is attended by observances so elaborate as to show that marriage is one of the profoundest sacraments of the tribe, penetrating the innermost recesses of tribal thought, and interwoven with the essential fibers of tribal existence. Few if any other peoples devote such anxious care to their mating as do the Seri;[1] and among no other known tribe or folk is the moral aspect of conjugal union so rigorously guarded by collective action and individual devotion.

The initial movement toward formal marriage seems to be somewhat indefinite (or perhaps, rather, spontaneous); according to Mashém it may be made either by the prospective groom or else by his father, though not directly by the maiden or her kinswomen. In any event the prerequisites for the union are provisionally determined in the suitor's family; these relate to the suitability of age, the propriety of the clan relation, etc.; for no stripling may seriously contemplate matrimony until he has entered manhood (apparently corresponding with the warrior class), nor can he mate in his own totem, though all other clans of the tribe are apparently open to him; while the maiden must have passed (apparently by a considerable time) her puberty feast. In any event, too, the proposal is formally conveyed by the elder-woman of the suitor's family to the maiden's clanmother, when it is duly pondered, first by this dame and her daughter matrons; and later (if the proposal is entertained) it is deliberated and discussed at length by the matrons of the two clans involved, who commonly hold repeated councils for the purpose. At an undetermined stage and to an undetermined degree the maiden herself is consulted; certainly she holds the power of veto, ostensible if not actual. Pending the deliberations the maiden receives special consideration and enjoys various dignities; if circumstances favor, her kinswomen erect a jacal for her; and even if circumstances are adverse, she is outfitted with a pelican robe of six or eight pelts and other matronly requisites. When all parties concerned are eventually satisfied a probationary marriage is arranged, and the groom leaves his clan and attaches himself to that of the bride. Two essential conditions — one of material character and the

[1] Perhaps the closest parallel in this respect is that found in the elaborate marriage regulations prevailing among the Australian aborigines, as described by *Spencer and Gillen*, *Walter E. Roth*, and other modern observers. [See Part II, Chapter VII of this volume.]

other moral — are involved in this probationary union; in the first place, the groom must become the provider for, and the protector of, the entire family of the bride, including the dependent children and such cripples and invalids as may be tolerated by the tribe — *i.e.*, he must display and exercise skill in turtle-fishing, strength in the chase, subtlety in warfare, and all other physical qualities of competent manhood. This relation, with the attendant obligations, holds for a year, *i.e.*, a round of the seasons. During the same period the groom shares the jacal and sleeping robe provided for the prospective matron by her kinswomen, not as privileged spouse, but merely as a protecting companion; and throughout this probationary term he is compelled to maintain continence — *i.e.*, he must display the most indubitable proofs of moral force. During this period the always dignified position occupied by the daughter of the family culminates; she is the observed of all observers, the subject of gossip among matrons and warriors alike, the recipient of frequent tokens from designing sisters with an eye to shares of her spouse's spoils, and the receiver of material supplies measuring the competence of the would-be husband; through his energy she is enabled to dispense largess with lavish hand, and thus to dignify her clan and honor her spouse in the most effective way known to primitive life; and at the same time she enjoys the immeasurable moral stimulus of realizing that she is the arbiter of the fate of a man who becomes warrior or outcast at her bidding, and through him of the future of two clans — *i.e.*, she is raised to a responsibility in both personal and tribal affairs which, albeit temporary, is hardly lower than that of the warrior-chief. In tribal theory the moral test measures the character of the man; in very fact, it at the same time both measures and makes the character of the woman. Among other privileges bestowed on the bride during the probationary period are those of receiving the most intimate attentions from the clan-fellows of the groom; and these are noteworthy as suggestions of a vestigial polyandry or adelphogamy. At the close of the year the probation ends in a feast provided by the probationer, who thereupon enters the bride's jacal as a perpetual guest of unlimited personal privileges (subject to tribal custom); while the bride passes from a half-wanton heyday into the duller routine of matronly existence.

These details were elicited at Costa Rica in 1894 through methodical inquiries made in connection with the linguistic collection. This collection was made with the coöperation of Señor

Alvemar-Leon as Spanish-English interpreter, together with Mashém and (commonly) the clanmother known as Juana Maria. Usually quite a group of Seri matrons with two or three warriors were gathered about, and to these Mashém frequently appealed for advice and verification, while they constantly expressed approval or disapproval of questions and replies, as gathered through Mashém's words and mien, in such manner as to afford a fair index of their habitual thought — *e.g.*, when the Seri vernacular for "twins" was obtained and the inquiry was extended (by normal association of ideas) to the term for "triplets," Mashém collapsed into moody silence while the rest of the group decamped incontinently with horror-stricken countenances — thereby suggesting cautious subsequent inquiry, and the discovery that triplets are deemed evil monsters and their production a capital crime. It was in one of the earlier conferences that the first intimations concerning the unusual marital customs were incidentally brought out; the Caucasian interpreter and bystanders were diverted by the naïve reference to the moral test, but their expressions were hastily checked lest the native informants might be startled and rendered secretive; then, during two later conferences, when Mashém and several matrons were freely participating in the proceedings, the line of inquiry was so turned as to touch on various aspects of the marriage custom and bring out all essential features; so that much confidence is reposed in the accuracy of the details.[1] The confidence in the verity of the customs was such as not to be impaired seriously by the fact that no records of coincident moral tests were known in the voluminous literature of marriage and its concomitants; nor was it shaken by the still weightier fact that none of the experienced ethnologists to whom inquiries were addressed during ensuing months were acquainted with parallel customs — indeed the only shadow of corroboration thus obtained came in the form of references to the widespread requirement of continence in war and ceremonies, and to an affectation of self-restraint for a moon on the part of Zuñi grooms noted by Frank Hamilton Cushing. Accordingly the facts were announced in a preliminary paper,[2] and were shown to stand in such relation

[1] It may be observed that Kolusio, when visited in January, 1896, failed to corroborate the descriptions of Mashém and the matrons; but his failure occasioned little surprise for the reason that he has not lived with his tribe since early boyhood, and is equally uninformed (or uncommunicative) concerning the myths, ceremonies, and even the totems of the tribe.

[2] "The Beginning of Marriage," "American Anthropologist," vol. ix, 1896, pp. 371-383.

to the marital customs of other aboriginal tribes as practically to demonstrate their validity, and at the same time to locate the Seri customs on a lower plane of cultural development than any hitherto definitely recognized.

Happily, subsequent researches have resulted in the discovery of records corroborative of the primitive customs observed by the Seri, and also of the assignment of serial place to these customs. The most specific record is that of John Giles (or Gyles), who spent his youth as a captive among the northeastern Algonquian Indians (probably the Maliseet or some closely related Abnaki tribe), from August 2, 1689, to June 28, 1698. Referring to the marital customs of the tribe, he observed:

> If parents have a daughter marriageable, they seek a husband for her who is a good hunter. If she has been educated to make *monoodah* (Indian bags), birch dishes, to lace snowshoes, make Indian shoes, string wampum belts, sew birch canoes, and boil the kettle, she is esteemed a lady of fine accomplishments. If the man sought out for her husband have a gun and ammunition, a canoe, a spear, a hatchet, a monoodah, a crooked knife, looking-glass and paint, a pipe, tobacco, and knot-bowl to toss a kind of dice in, he is accounted a gentleman of a plentiful fortune. Whatever the new married man procures the first year belongs to his wife's parents. If the young pair have a child within a year and nine months, they are thought to be very forward and libidinous persons.[1]

This record is of peculiar interest in that it definitely specifies a custom corresponding with the material test of the Seri, and unmistakably implies the existence, at least in vestigial or sentimental form, of a custom corresponding with the moral test of Seriland; and it is particularly noteworthy as coming from a remote tribe occupying a distant part of the continent.

A somewhat less specific corroboration is found in Lawson's account of the Carolina tribes. He observes:

> When any young Indian has a mind for such a girl to his wife, he, or some one for him, goes to the young woman's parents, if living; if not, to her nearest relations, where they make offers of the match betwixt the couple. The relations reply, they will consider of it; which serves for a sufficient answer, till there be a second meeting about the marriage, which is generally brought into debate before all the relations, that are old people, on both sides, and sometimes the king, with all his great men, give their opinions therein. If it be agreed on, and the young woman approve thereof, for these savages never give their children in marriage without their own consent, the man pays so much for his wife; and the handsomer she is the greater price she bears. Now, it often happens that the man has not so much of their money ready as he is to pay for his wife; but if they know him to be a good hunter, and that he can raise the sum agreed for,

[1] 'Memoirs | of | Odd Adventures, | Strange Deliverances, etc. | in the | Captivity of John Giles, Esq., | Commander of the Garrison on Saint George river, in the | District of Maine. | Written by Himself. | Originally published at Boston, 1736. | Printed for William Dodge. | Cincinnati: | Spiller & Gates, printers, 168 Vine street. | 1869." — P. 45.

in some few moons, or any little time they agree, she shall go along with him as betrothed, but he is not to have any knowledge of her till the utmost payment is discharged; all which is punctually observed. Thus they lie together under one covering for several months, and the woman remains the same as she was when she first came to him.[1]

This record also is peculiarly pertinent, partly in that it practically corroborates the Seri testimony, but chiefly in that it indicates definite transition toward a higher culture-plane in which the primitive material test is at least partially replaced by a commutation in goods or their equivalents.

On reducing the marital customs of the Seri to conventional terms, the more prominent features are found to be (1) strict clan exogamy and (2) absolute tribal endogamy, together with (3) theoretical or constructive monogamy, coupled with (4) vague traces of polyandry, and (5) an apparently superficial polygyny, as well as (6) total absence of purchase or capture of either spouse.

On reviewing the customs in the light of their influence on the everyday life of the tribe, certain features stand out conspicuously: (1) Perhaps the most striking feature is the collective character of the function; for while the movement originates in personal inclination on the part of the suitor and is shaped by personal inclination on the part of the maiden, all manifestations of inclination are open and public (at least to the elders of the two clans involved), while the personal sentiments on both sides are completely subordinated to the public interests of clans and tribe as weighed and decided by the matronly lawgivers and adelphiarchal administratives. Thus neither man nor maid mates for one's self, but both love and move in the tribal interests and along the lines laid down by the tribal leaders. (2) As a corollary or a complement (according to the viewpoint) to the collectivity of the mating, the next most striking feature is the formal or legal aspect of the union; for the entire affair, from inception to consummation, is rigorously regulated by precedents and usages handed down from an immemorial past. Thus the roots of young affection are not destroyed but rather cultivated, though the burgeoning vine and the outreaching tendrils are trained to a social structure shaped in ages gone and kept in the olden form by unbroken tradition. (3) A collateral feature of the customs is the necessary reaction of the requirements on individual character of both groom and bride; for the would-be warrior-spouse is

[1] "The History of Carolina," etc. by *John Lawson* (1714), reprint of 1860, pp. 302–303. Attention was called to this passage by Mr. James Mooney.

compelled to display high qualities of physical and moral manhood on pain of ostracism and outlawry, so that his passions of ambition and affection are at once stimulated to the highest degree, while the maiden's pride of blood and possession and her sense of regnant responsibility are fostered to the utmost. The brief preliminary courtship and the long probationary mating mark an era of intensification in two lives at their most impressionable stage; and if there be aught in the simple yet puissant law of conjugal conation — that law whose motive underlies the world's song and story and all the pulsing progress of mankind as the inspiration of most men's work and most women's hopes — the vital intensity of this era passes down the line of blood-descent to the betterment of later generations. (4) Another collateral feature is the necessary reaction on clan and tribe; for not only does the individual character-making raise the average physique and morale of the group, but the carefully studied restraint of excessive individuality serves to strengthen still further the tribal bonds and to lift still higher the racial bar against aliens. The blackest crime in the Seri calendar is the toleration of alien blood; and no more effective device could be found for keeping alive the race-sense on which this canon depends than that virtually sacramental surveillance of sexual intimacy which Seri usage requires.[1]

On scanning the conventional classifications of human marriage in the light of the Seri customs, it becomes clear that these customs define a plane not hitherto recognized observationally. For convenience, this plane and the mode of marriage defining it may, in special allusion to the correlative race-sense, be styled *ethnogamy;* and the more systematic characters of this mode and plane of marriage may be outlined briefly:

[1] The remarkable race-sense of the tribe, with the conjugal conation in which it seems to root, are discussed *ante*, [not reprinted]. There is nothing to indicate, and much to contraindicate, that the Seri are consciously engaged in stirpiculture; yet their social and fiducial devices would seem to be no less effective in developing race-sense, with its concomitants, than were those of prehistoric men in developing the physical attributes of animal associates, such as the wool-bearing of the sheep, the egg-laying of the fowl, and the milk-giving of the cow; or the still more striking mental attributes, such as the servility of the horse, the fidelity of the dog, and the domesticity of the cat. All these attributes are artificial, though not consciously so to their producers, hardly even to modern users; they are by-products of long-continued breeding and exercises, commonly directed toward collateral ends (as when the horse was bred for speed, the dog for hunting, and the fowl and cat for beauty); and, similarly, the Seri race-sense would seem to be largely a by-product of faith-shaped customs designed primarily to propitiate or invoke mystical potencies — yet the collateral effect is not diminished because overlooked in the primary motive.

1. The most conspicuous character of ethnogamic union, as manifested in the type tribe, is its absolute confinement to the consanguineal group. The breach of this limitation is hardly conceivable in the minds of the group, since aliens are not classed as human, nor even dignified as animals of the kinds deified in their lowly faith, but contemned as unclean and loathsome monsters; yet the infraction has a sort of theoretical place at the head of their calendar as an utterly intolerable crime. In respect to this character, ethnogamy corresponds fairly with the endogamy of McLennan, Spencer, and others, *i.e.*, with the tribal endogamy of Powell.

2. A hardly less conspicuous character of ethnogamic union is the formality, or legality, accompanying and reflecting the collective nature of the function. In this respect ethnogamy is the direct antithesis of that hypothetical promiscuity postulated by Morgan and adopted by Spencer, Lubbock, Tylor, and others; and the customs of the type tribe go farther, perhaps, than any other example in verifying the alternative assumption of Westermarck that the course of conjugal development is rather from monogamy toward promiscuity than in the reverse direction.

3. A noteworthy character of ethnogamic union is the absence of capture of either bride or groom. Any semblance of capture would indeed be wholly incongruous with the rigid confinement of union to members of the group; it would also be incongruous with the exceeding formality and necessary amicability of both preliminary and concomitant arrangements.

4. Another noteworthy character is the total absence of purchase on either part. Although a material condition attends the union, it is essentially a test of character, and is applied in such wise as to dignify the feminine element rather than to degrade it like barbaric wife-purchase; while any semblance of purchase would be incongruous with the economic condition of a tribe practically destitute of accumulated property or even of thrift-sense.

5. A significant character of ethnogamic union, as exemplified in the type tribe, is the ceremonial or constructive monogamy. While there are obscure (and presumptively vestigial) traces of polyandry or adelphogamy, and while an informal polygyny is practiced by the chiefs and older warriors, the formal matings are between one man and one woman, and appear to be permanent.

Now, on comparing these characters with those revealed in the marital customs of other tribes and peoples, they are found

to betoken a notably provincial and primitive culture-stage. Perhaps the nearest American approach to the Seri customs is found among certain California aborigines, notably the Yurok and Patawat tribes, who recognize the institution of "half-marriage";[1] but here the material test of Seriland is replaced by purchase, while no trace of the moral test is found (even as among the Carolina Indians, according to Lawson); moreover, while these tribes discourage alien connections, they are not absolutely eschewed and reprobated as among the Seri. Other notably primitive customs, like those so fully described by Spencer and Gillen, have been found among the Australian aborigines;[2] but even here a part only of the marriages are regulated by amicable convention, while others are effected by (1) charm, (2) capture, and (3) elopement; and these collateral devices imply intertribal relations of a kind incongruous with the ethnogamic habit and utterly repugnant to the ethnogamic instinct. In both cases, accordingly, the marital customs clearly imply (and actually accompany) a much more highly differentiated socialry and economy than that of the Seri. The same is true of that vestigial custom of the Scottish clans known as handfasting, which is, moreover, a direct antithesis of the Seri custom in that it carries a warrant for, rather than an abridgment of, conjugal prerogatives; and the same might be said also of various South American, African, and southeastern Asian customs.

Certain representative North American customs have already been seriated in connection with the Seri customs, and their relations are of sufficient significance to warrant recapitulation. The series begins with the maternally organized and practically propertyless Seri. Next stand the Zuñi, with an essentially maternal organization, the vestigial moral test of the groom noted by Cushing, and a concomitant material test verging on purchase; so, too, monogamy persists, while the function remains largely collective, and is regulated by the elders, though the bride enjoys special prerogatives; and the fierce tribal endogamy is relaxed, though clan exogamy is enforced. Measurably similar to those of the Zuñi are the marital customs of the peaceful Tarahumari tribe of northern Mexico and the once warlike Seneca tribe of northeastern United States, although among both of these more cosmopolitan peoples the regulations are less closely similar to the Seri

[1] "Contributions to North American Ethnology," vol. iii, 1877 ("Tribes of California," by *Stephen Powers*), pp. 56, 98.

[2] "The Native Tribes of Central Australia," 1899, pp. 554–560 and elsewhere.

customs than are those of the Pueblo tribe named. Next in order of marital differentiation stand the Kwakiutl and Salish tribes of British Columbia, in which the social organization has practically passed into the paternal stage; here the laws of monogamy, clan exogamy, and tribal endogamy are materially relaxed, the moral test is lost among the Kwakiutl and reduced to a curious vestige among the Salish, while the material test is commuted into the making of expensive presents. Still more remote from the initial stage is the marriage of the paternally organized Omaha, among whom tribal endogamy is prevalent but not absolute, while polygyny is customary; among whom the moral test seems wholly obsolete, while the material test is completely replaced by purchase (or at least by the interchange of expensive presents); and among whom, concordantly, the feminine privileges are few and the females are practically degraded to the rank of property of male kindred or spouses. These several customs fall into a natural order or series definitely coördinated with the esthetic, the industrial or economic, and the general institutional or social conditions of the respective tribes; and it is noteworthy that they mark successive stages in that passage from the mechanical to the spontaneous which characterizes demotic activity.[1]

In brief, ethnogamy, as exemplified by the type tribe, accompanies that strictly maternal organization which marks the lowest known stage of social development; it accompanies also a rudimentary esthetic condition in which decorative symbols are restricted to the expression of maternal relation; it accompanies, in like manner, an inchoate economic condition characterized by absence of property and thrift-sense; while its most essential concomitant is extratribal antipathy too bitter to permit toleration of alien blood, or even of alien presence save under the constraint of superior force.

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[1] *Cf.* "The Beginning of Marriage," *op. cit.* The conclusion from the details discussed in this paper is as follows: "Summarizing the tendencies revealed in this history, it would appear that the course of evolution [of conjugal institutions] has been from the simple to the complex, from the definite to the indefinite, from the general to the special, from the fixed to the variable, from the involuntary to the voluntary, from the mechanical to the spontaneous, from the provincial to the cosmopolitan, or, in brief, from the chiefly biotic to the wholly demotic" (p. 283).

Chapter X

WYANDOT GOVERNMENT: A SHORT STUDY OF TRIBAL SOCIETY [1]

In the social organization of the Wyandots four groups are recognized — the family, the gens, the phratry, and the tribe.

A. THE FAMILY

The family, as the term is here used, is nearly synonymous with the household. It is composed of the persons who occupy one lodge, or, in their permanent wigwams, one section of a communal dwelling. These permanent dwellings are constructed in an oblong form, of poles interwoven with bark. The fire is placed in line along the center, and is usually built for two families, one occupying the place on each side of the fire.

The head of the family is a woman.

B. THE GENS

The gens is an organized body of consanguineal kindred in the female line. "The woman carries the gens," is the formulated statement by which a Wyandot expresses the idea that descent is in the female line. Each gens has the name of some animal, the ancient of such animal being its tutelar god. Up to the time that the tribe left Ohio, eleven gentes were recognized, as follows:

Deer, Bear, Highland Turtle (striped), Highland Turtle (black), Mud Turtle, Smooth Large Turtle, Hawk, Beaver, Wolf, Sea Snake, and Porcupine.

In speaking of an individual he is said to be a wolf, a bear, or a deer, as the case may be, meaning thereby that he belongs to

[1] [By J. W. Powell. Reprinted from the 16th Annual Report of the Bureau of American Ethnology (The Smithsonian Institution) by permission of the Director.

Major Powell was born March 24, 1834; died Sept. 23, 1902. He was Director of the Bureau of Ethnology, 1879–1902. He was a distinguished authority, and contributed valuable works, on ethnology, linguistics, and geology.]

that gens; but in speaking of the body of people comprising a gens, they are said to be relatives of the wolf, the bear, or the deer, as the case may be.

There is a body of names belonging to each gens, so that each person's name indicates the gens to which he belongs. These names are derived from the characteristics, habits, attitudes, or mythologic stories connected with the tutelar god.

The following schedule presents the name of a man and a woman in each gens, as illustrating this statement:

	Wun-dát	English
Man of Deer gens	De-wa-tí-re	Lean Deer.
Woman of Deer gens	A-ya-jin-ta	Spotted Fawn.
Man of Bear gens	A-tu-e-tĕs	Long Claws.
Woman of Bear gens	Tsá-ma^{n} -da-ka-é	Grunting for her Young.
Man of Striped Turtle gens	Ta-há-so^{n}-ta-ra-ta-se	Going Around the Lake.
Woman of Striped Turtle gens	Tso-we-yuñ-kyu	Gone from the Water.
Man of Mud Turtle gens	Sha-yän-tsu-wat′	Hard Skull.
Woman of Mud Turtle gens	Ya^{n} -dăc-u-răs	Finding Sand Beach.
Man of Smooth Large Turtle gens	Hu^{n}′-du-cu-tá	Throwing Sand.
Woman of Smooth Large Turtle gens	Tsu-ca-e^{n}	Slow Walker.
Man of Wolf gens	Ha-ró-u^{n}-yû	One who goes about in the Dark; a Prowler.
Woman of Wolf gens	Ya^{n} -di-no	Always Hungry.
Man of Snake gens	Hu-ta-hú-sa	Sitting in curled Position.
Woman of Snake gens	Di-jé-rons	One who Ripples the Water.
Man of Porcupine gens	Ha^{n} -dú-tu^{n}	The one who puts up Quills.
Woman of Porcupine gens	Ké-ya-runs-kwa	Good-Sighted.

C. THE PHRATRY

There are four phratries in the tribe, the three gentes Bear, Deer, and Striped Turtle constituting the first; the Highland Turtle, Black Turtle, and Smooth Large Turtle the second; the Hawk, Beaver, and Wolf the third; and the Sea Snake and Porcupine the fourth.

This unit in their organization has a mythologic basis, and is chiefly used for religious purposes, in the preparation of medicines, and in festivals and games.

The eleven gentes, as four phratries, constitute the tribe.

Each gens is a body of consanguineal kindred in the female line, and each gens is allied to other gentes by consanguineal kinship through the male line, and by affinity through marriage.

To be a member of the tribe it is necessary to be a member of a gens; to be a member of a gens it is necessary to belong to some family; and to belong to a family a person must have been born in the family so that his kinship is recognized, or he must be adopted into a family and become a son, brother, or some definite relative; and this artificial relationship gives him the same standing as actual relationship in the family, in the gens, in the phratry, and in the tribe.

Thus a tribe is a body of kindred.

Of the four groups thus described, the gens, the phratry, and the tribe constitute the series of organic units; the family, or household as here described, is not a unit of the gens or phratry, as two gentes are represented in each — the father must belong to one gens, and the mother and her children to another.

1. GOVERNMENT

Society is maintained by the establishment of government, for rights must be recognized and duties performed.

In this tribe there is found a complete differentiation of the military from the civil government.

2. CIVIL GOVERNMENT

The civil government inheres in a system of councils and chiefs.

In each gens there is a council, composed of four women, called *Yu-waí-yu-wá-nȧ*. These four women councillors select a chief of the gens from its male members — that is, from their brothers and sons. This gentile chief is the head of the gentile council.

The council of the tribe is composed of the aggregated gentile councils. The tribal council, therefore, is composed one-fifth of men and four-fifths of women.

The sachem of the tribe, or tribal chief, is chosen by the chiefs of the gentes.

There is sometimes a grand council of the gens, composed of the councillors of the gens proper and all the heads of households and leading men — brothers and sons.

There is also sometimes a grand council of the tribe, composed of the council of the tribe proper and the heads of households of the tribe, and all the leading men of the tribe.

These grand councils are convened for special purposes.

3. METHODS OF CHOOSING AND INSTALLING COUNCILLORS AND CHIEFS

The four women councillors of the gens are chosen by the heads of households, themselves being women. There is no formal election, but frequent discussion is had over the matter from time to time, in which a sentiment grows up within the gens and throughout the tribe that, in the event of the death of any councillor, a certain person will take her place.

In this manner there is usually one, two, or more potential councillors in each gens who are expected to attend all the meetings of the council, though they take no part in the deliberations and have no vote.

When a woman is installed as councillor a feast is prepared by the gens to which she belongs, and to this feast all the members of the tribe are invited. The woman is painted and dressed in her best attire and the sachem of the tribe places upon her head the gentile chaplet of feathers, and announces in a formal manner to the assembled guests that the woman has been chosen a councillor. The ceremony is followed by feasting and dancing, often continued late into the night.

The gentile chief is chosen by the council women after consultation with the other women and men of the gens. Often the gentile chief is a potential chief through a period of probation. During this time he attends the meetings of the council, but takes no part in the deliberations, and has no vote.

At his installation, the council women invest him with an elaborately ornamented tunic, place upon his head a chaplet of feathers, and paint the gentile totem on his face. The sachem of the tribe then announces to the people that the man has been made chief of the gens, and admitted to the council. This is also followed by a festival.

The sachem of the tribe is selected by the men belonging to the council of the tribe. Formerly the sachemship inhered in the Bear gens, but at present he is chosen from the Deer gens, from the fact, as the Wyandots say, that death has carried away all the wise men of the Bear gens.

The chief of the Wolf gens is the herald and the sheriff of the tribe. He superintends the erection of the council-house and has the care of it. He calls the council together in a formal manner when directed by the sachem. He announces to the tribe all the decisions of the council, and executes the directions of the council and of the sachem.

Gentile councils are held frequently from day to day and from week to week, and are called by the chief whenever deemed necessary. When matters before the council are considered of great importance, a grand council of the gens may be called.

The tribal council is held regularly on the night of the full moon of each lunation, and at such other times as the sachem may determine; but extra councils are usually called by the sachem at the request of a number of councillors.

Meetings of the gentile councils are very informal, but the meetings of the tribal councils are conducted with due ceremony. When all the persons are assembled, the chief of the Wolf gens calls them to order, fills and lights a pipe, sends one puff of smoke to the heavens and another to the earth. The pipe is then handed to the sachem, who fills his mouth with smoke, and, turning from left to right with the sun, slowly puffs it out over the heads of the councillors, who are sitting in a circle. He then hands the pipe to the man on his left, and it is smoked in turn by each person until it has been passed around the circle. The sachem then explains the object for which the council is called. Each person in the way and manner he chooses tells what he thinks should be done in the case. If a majority of the council is agreed as to action, the sachem does not speak, but may simply announce the decision. But in some cases there may be protracted debate, which is carried on with great deliberation. In case of a tie, the sachem is expected to speak.

It is considered dishonorable for any man to reverse his decision after having spoken.

Such are the organic elements of the Wyandot government.

4. FUNCTIONS OF CIVIL GOVERNMENT

It is the function of government to preserve rights and enforce the performance of duties. Rights and duties are co-relative. Rights imply duties, and duties imply right. The right inhering in the party of the first part imposes a duty on the party of the second part. The right and its co-relative duty are inseparable parts of a relation that must be maintained by government; and the relations which governments are established to maintain may be treated under the general head of rights.

In Wyandot government these rights may be classed as follows:

First — Rights of marriage.

Second — Rights to names.

Third — Rights to personal adornments.
Fourth — Rights of order in encampments and migrations.
Fifth — Rights of property.
Sixth — Rights of person.
Seventh — Rights of community.
Eighth — Rights of religion.

To maintain rights, rules of conduct are established, not by formal enactment, but by regulated usage. Such custom-made laws may be called regulations.

5. MARRIAGE REGULATIONS

Marriage between members of the same gens is forbidden, but consanguineal marriages between persons of different gentes are permitted. For example, a man may not marry his mother's sister's daughter, as she belongs to the same gens with himself; but he can marry his father's sister's daughter, because she belongs to a different gens.

Husbands retain all their rights and privileges in their own gentes, though they live with the gentes of their wives. Children, irrespective of sex, belong to the gens of the mother. Men and women must marry within the tribe. A woman taken to wife from without the tribe must first be adopted into some family of a gens other than that to which the man belongs. That a woman may take for a husband a man without the tribe he must also be adopted into the family of some gens other than that of the woman. What has been called by some ethnologists endogamy and exogamy are correlative parts of one regulation, and the Wyandots, like all other tribes of which we have any knowledge in North America, are both endogamous and exogamous.

Polygamy is permitted, but the wives must belong to different gentes. The first wife remains the head of the household. Polyandry is prohibited.

A man seeking a wife consults her mother, sometimes direct, and sometimes through his own mother. The mother of the girl advises with the women councillors to obtain their consent, and the young people usually submit quietly to their decision. Sometimes the women councillors consult with the men.

When a girl is betrothed, the man makes such presents to the mother as he can. It is customary to consummate the marriage before the end of the moon in which the betrothal is made. Bridegroom and bride make promises of faithfulness to the parents and

women councillors of both parties. It is customary to give a marriage feast, in which the gentes of both parties take part. For a short time at least, bride and groom live with the bride's mother, or rather in the original household of the bride.

The time when they will set up housekeeping for themselves is usually arranged before marriage.

In the event of the death of the mother, the children belong to her sister or to her nearest female kin, the matter being settled by the council women of the gens. As the children belong to the mother, on the death of the father the mother and children are cared for by her nearest male relative until subsequent marriage.

6. NAME REGULATIONS

It has been previously explained that there is a body of names, the exclusive property of each gens. Once a year, at the green corn festival, the council women of the gens select the names for the children born during the previous year, and the chief of the gens proclaims these names at the festival. No person may change his name, but every person, man or woman, by honorable or dishonorable conduct, or by remarkable circumstance, may win a second name commemorative of deed or circumstance, which is a kind of title.

7. REGULATIONS OF PERSONAL ADORNMENT

Each clan has a distinctive method of painting the face, a distinctive chaplet to be worn by the gentile chief and council women when they are inaugurated, and subsequently at festival occasions, and distinctive ornaments for all its members, to be used at festivals and religious ceremonies.

8. REGULATIONS OF ORDER IN ENCAMPMENT AND MIGRATIONS

The camp of the tribe is in an open circle or horse-shoe, and the gentes camp in following order, beginning on the left and going around to the right:

Deer, Bear, Highland Turtle (striped), Highland Turtle (black), Mud Turtle, Smooth Large Turtle, Hawk, Beaver, Wolf, Sea Snake, Porcupine.

The order in which the households camp in the gentile group is

regulated by the gentile councillors and adjusted from time to time in such a manner that the oldest family is placed on the left, and the youngest on the right. In migrations and expeditions the order of travel follows the analogy of encampment.

9. PROPERTY RIGHTS

Within the area claimed by the tribe each gens occupies a smaller tract for the purpose of cultivation. The right of the gens to cultivate a particular tract is a matter settled in the council of the tribe, and the gens may abandon one tract for another only with the consent of the tribe. The women councillors partition the gentile land among the householders, and the household tracts are distinctly marked by them. The ground is re-partitioned once in two years. The heads of households are responsible for the cultivation of the tract, and should this duty be neglected the council of the gens calls the responsible parties to account.

Cultivation is communal; that is, all of the able-bodied women of the gens take part in the cultivation of each household tract in the following manner:

The head of the household sends her brother or son into the forest or to the stream to bring in game or fish for a feast; then the able-bodied women of the gens are invited to assist in the cultivation of the land, and when this work is done a feast is given.

The wigwam or lodge and all articles of the household belong to the woman — the head of the household — and at her death are inherited by her eldest daughter, or nearest of female kin. The matter is settled by the council women. If the husband die his property is inherited by his brother or his sister's son, except such portion as may be buried with him. His property consists of his clothing, hunting and fishing implements, and such articles as are used personally by himself.

Usually a small canoe is the individual property of the man. Large canoes are made by the male members of the gentes, and are the property of the gentes.

10. RIGHTS OF PERSON

Each individual has a right to freedom of person and security from personal and bodily injury, unless adjudged guilty of crime by proper authority.

11. COMMUNITY RIGHTS

Each gens has the right to the services of all its women in the cultivation of the soil. Each gens has the right to the service of all its male members in avenging wrongs, and the tribe has the right to the service of all its male members in time of war.

12. RIGHTS OF RELIGION

Each phratry has the right to certain religious ceremonies and the preparation of certain medicines.

Each gens has the exclusive right to worship its tutelar god, and each individual has the exclusive right to the possession and use of a particular amulet.

13. CRIMES

The violations of right are crimes. Some of the crimes recognized by the Wyandots are as follows:

1. Adultery.
2. Theft.
3. Maiming.
4. Murder.
5. Treason.
6. Witchcraft.

A maiden guilty of fornication may be punished by her mother or female guardian, but if the crime is flagrant and repeated, so as to become a matter of general gossip, and the mother fails to correct it, the matter may be taken up by the council women of the gens.

A woman guilty of adultery, for the first offense is punished by having her hair cropped; for repeated offenses her left ear is cut off.

14. THEFT

The punishment for theft is twofold restitution. When the prosecutor and prosecuted belong to the same gens, the trial is before the council of the gens, and from it there is no appeal. If the parties involved are of different gentes, the prosecutor, through the head of his household, lays the matter before the council of his own gens; by it the matter is laid before the gentile council of the accused in a formal manner. Thereupon it becomes the duty of the council of the accused to investigate the facts for themselves, and to settle the matter with the council of the plaintiff. Failure thus to do is followed by retaliation in the seizing of any property of the gens which may be found.

15. MAIMING

Maiming is compounded, and the method of procedure in prosecution is essentially the same as for theft.

16. MURDER

In the case of murder, if both parties are members of the same gens, the matter is tried by the gentile council on complaint of the head of the household, but there may be an appeal to the council of the tribe. Where the parties belong to different gentes, complaint is formally made by the injured party, through the chief of his gens, in the following manner:

A wooden tablet is prepared, upon which is inscribed the totem or heraldic emblem of the injured man's gens, and a picture-writing setting forth the offense follows.

The gentile chief appears before the chief of the council of the offender, and formally states the offense, explaining the picture-writing, which is then delivered.

A council of the offender's gens is thereupon called and a trial is held. It is the duty of this council to examine the evidence for themselves and to come to a conclusion without further presentation of the matter on the part of the person aggrieved. Having decided the matter among themselves, they appear before the chief of the council of the aggrieved party to offer compensation.

If the gens of the offender fail to settle the matter with the gens of the aggrieved party, it is the duty of his nearest relative to avenge the wrong. Either party may appeal to the council of the tribe. The appeal must be made in due form, by the presentation of a tablet of accusation.

Inquiry into the effect of a failure to observe prescribed formalities developed an interesting fact. In procedure against crime, failure in formality is not considered a violation of the rights of the accused, but proof of his innocence. It is considered supernatural evidence that the charges are false. In trials for all offenses forms of procedure are, therefore, likely to be earnestly questioned.

17. TREASON

Treason consists in revealing the secrets of the medicine preparations or giving other information or assistance to enemies of the tribe, and is punished by death. The trial is before the council of the tribe.

18. WITCHCRAFT

Witchcraft is punished by death, stabbing, tomahawking, or burning. Charges of witchcraft are investigated by the grand council of the tribe. When the accused is adjudged guilty, he may appeal to supernatural judgment. The test is by fire. A circular fire is built on the ground, through which the accused must run from east to west and from north to south. If no injury is received he is adjudged innocent; if he falls into the fire he is adjudged guilty. Should a person accused of having the general reputation of practicing witchcraft become deaf, blind, or have sore eyes, earache, headache, or other diseases considered loathsome, he is supposed to have failed in practicing his arts upon others, and to have fallen a victim to them himself. Such cases are most likely to be punished.

19. OUTLAWRY

The institution of outlawry exists among the Wyandots in a peculiar form. An outlaw is one who by his crimes has placed himself without the protection of his clan. A man can be declared an outlaw by his own clan, who thus publish to the tribe that they will not defend him in case he is injured by another. But usually outlawry is declared only after trial before the tribal council.

The method of procedure is analogous to that in case of murder. When the person has been adjudged guilty and sentence of outlawry declared, it is the duty of the chief of the Wolf clan to make known the decision of the council. This he does by appearing before each clan in the order of its encampment, and declaring in terms the crime of the outlaw and the sentence of outlawry, which may be either of two grades.

In the lowest grade it is declared that if the man shall thereafter continue in the commission of similar crimes, it will be lawful for any person to kill him; and if killed, rightfully or wrongfully, his clan will not avenge his death.

Outlawry of the highest degree makes it the duty of any member of the tribe who may meet with the offender to kill him.

20. MILITARY GOVERNMENT

The management of military affairs inheres in the military council and chief. The military council is composed of all the able-bodied men of the tribe; the military chief is chosen by the council from the Porcupine gens. Each gentile chief is respon-

sible for the military training of the youth under his authority. There is usually one or more potential military chiefs, who are the close companions and assistants of the chief in time of war, and in case of the death of the chief, take his place in the order of seniority.

Prisoners of war are adopted into the tribe or killed. To be adopted into the tribe, it is necessary that the prisoner should be adopted into some family. The warrior taking the prisoner has the first right to adopt him, and his male or female relatives have the right in the order of their kinship. If no one claims the prisoner for this purpose, he is caused to run the gauntlet as a test of his courage.

If at his trial he behaves manfully, claimants are not wanting, but if he behaves disgracefully he is put to death.

21. FELLOWHOOD

There is an interesting institution found among the Wyandots, as among some other of our North American tribes, namely, that of fellowhood. Two young men agree to be perpetual friends to each other, or more than brothers. Each reveals to the other the secrets of his life, and counsels with him on matters of importance, and defends him from wrong and violence, and at his death is chief mourner.

22. CONCLUSIONS

The government of the Wyandots, with the social organization upon which it is based, affords a typical example of tribal government throughout North America. Within that area there are several hundred distinct governments. In so great a number there is great variety, and in this variety we find different degrees of organization, the degrees of organization being determined by the differentiation of the functions of the government and the correlative specialization of organic elements.

Much has yet to be done in the study of these governments before safe generalizations may be made. But enough is known to warrant the following statement:

Tribal government in North America is based on kinship in that the fundamental units of social organization are bodies of consanguineal kindred either in the male or female line; these units being what has been well denominated "gentes."

These "gentes" are organized into tribes by ties of relationship and affinity, and this organization is of such a character that the man's position in the tribe is fixed by his kinship. There is no place in a tribe for any person whose kinship is not fixed, and only

those persons can be adopted into the tribe who are adopted into some family with artificial kinship specified. The fabric of Indian society is a complex tissue of kinship. The warp is made of streams of kinship blood, and the woof of marriage ties.

With most tribes military and civil affairs are differentiated. The functions of civil government are in general differentiated only to this extent, that executive functions are performed by chiefs and sachems, but these chiefs and sachems are also members of the council. The council is legislature and court. Perhaps it were better to say that the council is the court whose decisions are law, and that the legislative body properly has not been developed.

In general, crimes are well defined. Procedure is formal, and forms are held as of such importance that error therein is *prima facie* evidence that the subject-matter formulated was false.

When one gens charges crime against a member of another, it can of its own motion proceed only to retaliation. To prevent retaliation, the gens of the offender must take the necessary steps to disprove the crime, or to compound or punish it. The charge once made is held as just and true until it has been disproved, and in trial the cause of the defendant is first stated. . . .

In the tribal governments there are many institutions, customs, and traditions which give evidence of a former condition in which society was based not upon kinship, but upon marriage.

From a survey of the facts it seems highly probable that kinship society, as it exists among the tribes of North America, has developed from connubial society, which is discovered elsewhere on the globe. In fact, there are a few tribes that seem scarcely to have passed that indefinite boundary between the two social states. Philologic research leads to the same conclusion.

Nowhere in North America have a people been discovered who have passed beyond tribal society to national society based on property, *i.e.*, that form of society which is characteristic of civilization. Some peoples may not have reached kinship society; none have passed it.

Nations with civilized institutions, art with palaces, monotheism as the worship of the Great Spirit, all vanish from the priscan condition of North America in the light of anthropologic research. Tribes with the social institutions of kinship, art with its highest architectural development exhibited in the structure of communal dwellings, and polytheism in the worship of mythic animals and nature-gods remain.

Chapter XI

KAFIR LAWS AND CUSTOMS[1]

Section 1

THE AMAXOSA TRIBES

1. THE GOVERNMENT AND ITS PRACTICAL OPERATION

It is common to talk of the *despotism* of Kafir chiefs. If by the use of this term it is intended to be implied that the will of the chief is the sole law of the nation, it is incorrect. The government amongst the tribes on this side of the Bashee is not a despotism. Such a term may be applicable to the rule of Mosheshe, the Basutu chief, who boasted that when he spoke the mountains moved; or to the tyranny of Tshaka, the head of the Amazulu, who would order a number of his people unarmed to catch a hippopotamus alive, *and be obeyed*, too, so far at least as the attempt was concerned, although it involved the certain and wanton sacrifice of many lives. The government of the Amaxosa and Abatembu tribes is a sort of mixture of Patriarchism and Feudalism. Age gives great weight and influence to the will of a chief, and most chiefs of rank can generally find means to accomplish their wishes; but if these wishes involve the death or spoliation of any of their subjects, they are usually obliged to resort to some form of law to give colour to their procedure. In the case of a Kafir chief, the principal checks to the despotic inclinations which the possession of power always induces are, first, the division of the tribes, and secondly, the existence of a very influential council.

The operation of succession to the chieftainship, which was explained in the "Christian Watchman" for September, has led to the formation of various tribes nearly equal in power to each

[1] [Reprinted from "A Compendium of Kafir Laws and Customs (including Genealogical Tables of Kafir Chiefs and various Tribal Census Returns)"; compiled by direction of Colonel Maclean, C.B., Chief Commissioner in British Kaffraria (Grahamstown, 1906). The present account was written by Rev. H. H. Dugmore.]

other. It is very common for persons who have exposed themselves to the ire of their own chiefs, to take refuge amongst some tribe adjoining; and on doing so, they become so far safe as to be within the protection of a custom which forbids their arbitrary seizure by their own chief, and places them on the same footing (until investigation take place) as the subjects of the chief amongst whose people they have taken refuge. Any attempt to interfere with them by violence, when once they are within the territory of another tribe, would be resented by an instant rising of the clans nearest them in their defence, and that without any enquiry as to the merits of the case. The desire of each chief to increase the number of his retainers, often induces him to throw obstacles in the way of any investigation that would be likely to lead to the surrender of any man who had placed himself under his authority and protection from another tribe. It is therefore very common for all farther prosecution of a chief's quarrel with his delinquent subject to be abandoned, on the culprit once gaining the "city of refuge" which another tribe affords him. The practical limitation of the power of the chiefs, arising from the above circumstances, is easily perceived.

The existence of a council, in which all matters of importance are discussed at length, is another check upon the power of the chiefs. This council, the members of which are called *Amapakati* (literally "Middle ones"), is composed of commoners, who, by their courage in war, or their skill in debate on public questions, or in unravelling intricate law suits, have acquired great popular influence, and are thus qualified to sustain or control the power of the chiefs. They generally reside in different parts of the country, and have a sort of civil jurisdiction over their respective neighbourhoods. A few of them are mostly to be found at the chief's residence, but on the occurrence of any matter of public importance, the arrival of a message of consequence from the chief of another tribe, or the proposition of any particular measure on the part of their own chief, they are all summoned to the *umzi wakwomkulu*, and no decision is come to till the matter has been thoroughly discussed in all its bearings. As every one of these Amapakati has his own partizans and favourites in the tribe, so the shield of the *patron* is often interposed between his *client* and his chief.

The operation of the influence of the Amapakati in modifying the power of the chiefs is remarkable, as it has its periodical revolutions, its waxings and wanings. Some idea of the nature of

these alterations may be acquired by tracing the operation of a custom, which exists amongst the principal chiefs, of making one of the youngest of their wives the "great wife." The ground of this custom will be best understood from a view of the usual career of a chief in relation to his matrimonial alliances.

The first wife of a Kafir chief, "the wife of his youth," is not unfrequently taken from amongst the families of his own councillors. He is as yet "unknown to fame;" his wealth is not so considerable as it *is* to be. After awhile his alliance becomes more worthy the attention of those of other tribes, whose daughters demand a higher dowry than was required by the humbler parents of his first wife. Another and another are sent to him; for it must be borne in mind that a Kafir chief does not choose his own wives. He is surprised from time to time by the arrival of a bridal party, bringing with them as his offered bride some chief's daughter whom he has never seen before. The danger of refusing her is according to the rank and power of the family to which she belongs, for to refuse such an alliance is to offer a public insult to the whole tribe. The usual order of things, then, is, that as a chief grows older and richer, wives of higher rank are sent to him, and the reasons which operate against their refusal operate also against their having an inferior rank allotted to them in the successional distribution. The mother of him who is to be the "great son" may thus be the last wife the chief has taken, which is in fact sometimes the case.

The result of this process is, that a chief, dying in his old age, leaves a minor, often a mere child, to succeed him. What then is the position of the young chief? He finds himself surrounded by a number of greyheaded veteran associates of his father, who are strong in the possession of long continued popular influence, and insolent from their consciousness of possessing it. If he will yield himself to their sway, his course is smoothened for him; if he manifests much self-will, they do not scruple to remind him that they were the councillors and companions of his father before he was born; that his mother owed her appointment, and consequently her son his rank, to their advice and influence, and they will sometimes hint that they can *un*make as well as make chiefs; and threaten him with the elevation of a brother as a rival.

The rule of a young chief is thus in reality the rule of the old councillors of the tribe. The relative position of the two parties, however, gradually changes. While the young chief is advancing towards the vigour and resolution of manhood, the course of nature

is carrying the most venerable of his haughty mentors to the grave, and thus removing some of the most formidable obstacles to his own exercise of power. On the other hand, his own party, formed of the young and active spirits of the tribe, is growing in strength. By degrees he ventures on bolder measures. One after another of the old *Amapakati* falls a victim to an accusation of witchcraft, the Kafir state engine for the removal of the obnoxious, and by the time the young chief has grown old in his turn, he has surrounded himself with another set of councillors, who, enriched by the spoils of their predecessors, and inheritors of their influence, are prepared to do for the successor of their master what their own forerunners and victims did for himself, to be in their turn the victims of a system perpetuated from generation to generation.

Such in one point of view is the practical working of the Kafir system of government, as regards the tribes individually considered. That under such a system there should be more than enough of tyranny, might be inferred from the natural rapacity of power. But it is not the tyranny of *one*, whose will no other dares to thwart. It is divided amongst many, and is often more or less neutralized by the rival popular interests of the tyrannizers themselves.

A view of the *constitutional* sources of a Kafir chief's revenue, and its expenditure, will throw a little more light on this subject.

As cattle constitute the sole wealth of the people, so they are their only medium of such transactions as involve exchange, payment, or reward. The retainers of a chief serve him for cattle; nor is it expected that he could maintain his influence, or indeed secure any number of followers, if unable to provide them with what at once constitutes their money, food, and clothing. He requires, then, a constant fund from which to satisfy his dependents; and the amount of the fund required may be judged of from the character of the demand made upon him. His retinue, court, or whatever it is to be called, consists of men from all parts of the tribe, the young, the clever, and the brave, who come to *busa* (do court service), for a time, that they may obtain cattle to furnish them with the means of procuring wives, arms, or other objects of desire. On obtaining these they return to their homes and give place to others. Thus the immediate retinue of the chief is continually changing, and constitutes a permanent drain upon his resources. To meet this he has —

1. The inherited cattle of his father. Not that he inherits

the whole of his father's cattle. A prospective division of these is made at the time of the successional division of the chieftainship. The portion allotted to the "great" house, the cattle of the *Umzi wakwomkulu*, constitute the inheritance of the "great" son. This previous division of his father's property thus obliges every chief to begin his "reign" with less wealth than his father possessed.

2. The *Amawakhe*, or inauguration offerings. These consist of cattle, made on the day the chief completes his novitiate after circumcision. It having been previously announced to all the chiefs of rank in the nation, a grand meeting of the principal men of the tribe takes place on the day appointed; the young chief is presented to the councillors of his father, who lecture him, in terms not the most courteous or respectful, on his future conduct; the offerings and presents of the chiefs of other tribes are received, and constitute a formal recognition of their young compeer, and an acknowledgment of his rank, which accordingly dates from that ceremony.

3. The *Ukuqola*. This is a sort of occasional tribute or "benevolence," as our old English Sovereigns would term it, and consists of cattle furnished by the rich *commoners* of the chief's own tribe, to assist him in some special emergency.

4. Fines and confiscations. The universal punishment for crime is fining: cases of supposed witchcraft excepted, which usually involve the torture and cruel death of the party accused, and the seizure of all he possesses. In levying fines, however, a distinction is made between cases involving personal injury, and those which affect property merely. *Persons* are considered the property of the chief. Fines imposed for acts of violence committed on the person — cases of "blood" — are accordingly claimed by him, and the person or family, whose blood has been shed, receives no part of it. In what may be termed the *civil* cases, *i.e.*, those infringing on the rights of individual property, the party aggrieved claims the fine levied; but is nevertheless expected to fee the chief and his officials pretty liberally out of it; supposing the case to have been brought before him for legal investigation, which however is, generally speaking, only when the "lower courts" have been unable to settle it.

The above may be termed the *regular* sources of a Kafir chief's revenue. Presents extorted by personal importunity during *visits of friendship*, and the results of predatory excursions, belong to the "unfixed contingencies."

From the above remarks it will be seen that a Kafir chief is in

some respects dependent upon the goodwill of his people, and that it is necessary he should to a certain extent cultivate the arts of popularity. Accordingly, the cases of glaring oppression are only occasional, and occur where the hope of sharing in the spoil leads the majority of the *Amapakati* to support their chief in victimizing some unfortunate individual whose wealth constitutes his crime.

The foregoing observations chiefly respect the administration of the tribes separately considered. There is, however, a sort of general government, centring in the chief and council of the tribe first in hereditary rank, which extends to all the other tribes. It is, indeed, of rather a loose character, and interferes with the internal affairs of individual tribes only in cases of appeal, or when, as sometimes occurs, the chief of the tribe himself refers the case to the "great chief" for decision. Its general sphere of exercise is in such matters as affect the relations of the tribes with each other. In any case of this nature which may arise, the decision is supposed to rest with the *ukumkani*, as the paramount chief is designated. It is accordingly expected that the parties concerned will send their respective representations on the merits of the case to the council of the *ukumkani*, to be tried there. The sickness or death of any secondary or subordinate chief; disputes with regard to "the succession" in any of the secondary tribes; insults or injuries deemed to afford cause for an attack by one tribe on another; are among the cases of which the general government takes cognizance: and any subordinate tribe which should neglect to send a formal report of such matters to the "great place," and abide by the decision there pronounced, would be considered as having contemned the authority of the supreme government, and would be amenable accordingly.

Such is, in brief outline, the system of government which obtains amongst the tribes of the Amaxosa. It is, like other governments, the offspring of circumstances to a considerable extent: and although defective in many important respects, forms one amongst a variety of facts which give a practical contradiction to the assertion that the Kafirs belong to the lowest grade of the earth's population in point of intellectual development.[1] That it is very desirable it should be superseded by something better, may, however, be readily granted, and will perhaps appear all the more fully if we notice a few of the defects which it presents.

[1] See Prichard's "Physical History of Man."

1. With the exception of the principle of hereditary succession, it recognizes no fixed constitution or system of legislation. The appointment of the primary chieftainship is frequently the subject of caprice or intrigue, as might be expected where a plurality of wives obtains, and rival family interests present their clashing claims. There is at present a case in point, in the circumstances of the Imidushane, one of the principal tribes on the frontier; where, a fit of personal disgust having led Dushane to the informal supersession of his "great wife" by another, two rival candidates for *ubukulu* (greatness) have arisen in the two sons whose mothers have thus at different times been claimants of the rank so much coveted. Nor was the disputed succession settled when the present war broke out.

And then with regard to the principles of administration: — Some regard is paid to the decision of such chiefs of former days as were of note for sagacity and wisdom; and appeals are often made to them in the council debates, as furnishing general grounds upon which to decide existing cases. These are, however, forgotten in the course of a generation or two; and thus cease to influence after the lapse of a few years. Besides which, a chief of the present generation may equal or surpass his forefathers in wisdom, and thus his decisions, although differing in many respects from theirs, may come to be the oracles of his children in preference to those of an earlier date. The government is thus liable in this respect to incessant fluctuation, being destitute of the solid basis for regular action, which fixed principles alone can afford.

2. It confounds the legislative, judicial, and executive departments. — The laws originate in the decisions of the chief and his council; but the same council forms the great law-court of the tribe, in which the chief sits as judge, and afterwards enforces the execution of his own sentences, or perhaps inflicts the awarded punishment with his own hand. It is needless to enlarge on the practical effect of this. It is universally admitted to be dangerous to the claims of justice, when the same party that is to administer the law is entrusted to make it.

3. It affords no guarantee for the uniform administration of justice. — There is no "*letter* of the law" to appeal to, and thus there is much scope for the exercise of favoritism; of which, doubtless, from the powerful influence of the principal councillors, very much exists. The facility of escape to another tribe, already noticed, is farther obstructive to the impartial administration of justice, even in cases where the law is clear, and thus greatly checks

the repression of crime by the impunity which it offers to delinquents in affording them a place of refuge.

The above considerations may serve to show that for the true ends of government, the conservation of order, and the promotion of social comfort and happiness, the system existing amongst the Kafir tribes is destitute of energy and efficiency.

On the other hand, lawless and predatory habits are greatly fostered by the peculiar position and privileges of the *untitled* members of the chiefs' families. In the numberless ramifications of these which exist, there is provided an exhaustless supply of leaders for any enterprise which promises booty, and there are always numbers of young men of a restless, roving disposition ready for any career of adventure that holds out the prospect of obtaining cattle. Disputes and quarrels furnish frequent excuses for petty expeditions of this kind, in which cattle are swept off as a speedy mode of settling what the regular process of law might take some time to decide. These give occasion for others of a similar character by way of reprisal; and as opportunities for displaying courage and address are afforded by such forays, and as there is little to lose in them for those who have nothing, and at least the *prospect* of gain to stimulate them, in addition to the pride of distinction, such enterprises are very popular, although they often lead to feuds of a serious character, and of course oppose a formidable obstacle to social advancement.

2. LAWS AND LEGAL PROCESSES

It would be scarcely correct to speak of a *system* of Kafir law. The laws of the Kafir tribes are but a collection of *precedents*, consisting of the decisions of the chiefs and councils of bygone days, and embodied in the recollections, personal or traditional, of the people of the existing generation. That these decisions, in the first instance, were founded upon some general notion of right, is not unlikely. It is not, however, to the abstract merits of a case that the appeal is now ordinarily made, in legal discussions, but to what has been customary in past times. The decisions of deceased chiefs of note are the guide for the living in similar circumstances. The justice of those decisions is usually assumed as a matter of course, no one presuming to suppose that an Amaxosa *chief*, any more than an English *king*, can do "wrong." The changing condition of the tribes, arising from their growing intercourse with a civilised people is, however, gradually introduc-

ing more complicated questions amongst them; and thus the decisions of the Ancients are becoming less applicable to the circumstances of the Moderns than formerly. The result is, that more difficulty is felt in deciding, and the "glorious uncertainty" of the law of more enlightened lands is finding its way into the "courts" of Kaffraria.

In presenting a brief sketch of "Kafir Law," it may be observed in the first place, that a distinction obtains in some respects similar to that which exists amongst us between Criminal and Civil law. In one class of cases the *chief* is always considered the aggrieved party, and the action is always entered on his behalf. In the other, the *people* are the only parties concerned, the chief having to do with the matter in his capacity of judge merely. The principle which regulates the classification of cases is, however, one that makes a very different division of the civil from the criminal to that which obtains in civilized jurisprudence. This principle is, that a man's *goods* are his own property, but his *person* is the property of his chief. Thus, if his possessions be invaded, he claims redress for himself; but if his person be assaulted, and bodily injury be the result, it becomes *his* owner's concern. In the latter case, however heavily the offender may be fined, the actual sufferer derives no benefit. "No man can eat his own blood," is the maxim which regulates this procedure; and as the fines levied for personal injuries are considered the "price of blood," whoever should receive any part of such fine in a case where he had himself been the sufferer, would be regarded as violating this maxim.

The Kafir "criminal code" then, may be viewed as comprising whatever cases can be arranged under the general heads of treason, murder, assault, and witchcraft. The "civil" all that have reference to property; including as such a man's wife as the principal article, and his character as the next; and proceeding downwards through his various kinds of live-stock to his houses, granaries, and cornfields. A "good name" is deemed of such worth (possibly on the principle that the scarcity or rarity of an article enhances its value) that whoever attempts to "filch" it, runs the risk of a serious prosecution.

The penal sanctions of Kafir law resolve themselves into the general system of pecuniary fines, varying according to circumstances from a single head of cattle to the entire confiscation of property. The exceptions to this are, cases of assault on the persons of wives of the chiefs, and what are deemed aggravated cases of witchcraft. These usually involve the punishment of death

very summarily inflicted. This punishment, however, seldom follows even murder, when committed without the supposed aid of supernatural powers; and as banishment, imprisonment, and corporal punishment are all unknown in Kafir jurisprudence, the *property* of the people constitutes the great fund out of which the debts of justice are paid.

The principle upon which fines are levied is not very rigidly defined. Family and personal influence, and favouritism, have much to do with regulating the amount where the decision is given by the chiefs. In cases of cattle stealing, the law allows a fine of ten head, though but one may have been stolen, provided the animal has been slaughtered, or cannot be restored. The principle of ten for one is not, however, so applied as to involve the maintenance of the rule whatever be the number stolen. Though ten are levied when one has been stolen, it is not admitted to follow that a hundred may be demanded when *ten* have been stolen. The circumstances of the case are taken into consideration, and the decision varies accordingly. And then "by a fiction of law," iron pots, axes, and assagais are allowed to represent cattle; so that the man who pays for his theft five or six head of cattle, and a goat or two, making up the number of ten by the addition of some of the above articles, is frequently released from all farther legal claim, so far as that case is concerned.

Should a delinquent be too poor to pay the fine himself, his father, or nearest living relatives are held responsible, and many a grey-headed parent has the disagreeable task of doing for his scapegrace of a son what his own father in his younger days had to do for him. Should neither the offender nor his relatives be able to satisfy the *present* claims of justice, the law is so accommodating as to give credit; and five, ten, or *twenty* years afterwards, if his altered circumstances render it worth while to re-open the case, it is found carefully registered in the living records kept in the heads of old councillors.

When it is ascertained that stolen property has been shared by the thief with others, the fine imposed by law is levied upon the receivers and the thief in common, in proportion to the amount of plunder received by each participator.

In cases ranked as "Criminal," that is, where the chief himself is the prosecutor, the penalty very often consists in being "eaten," to use the rather expressive figure by which entire confiscation of property is implied. In some cases the nature of the crime fully warrants this, and would justify even more. In others, a looker-

on might feel it a difficult matter to find *good* reasons for such procedure; the chiefs, however, easily find reasons sufficient to satisfy *themselves*.

The course of law in Kafirland proceeds on a principle the very reverse of that which regulates English administration of justice. We assume the accused party innocent till his guilt is proved. In Kafirland he is held guilty till he can demonstrate his innocence. With us, *witnesses* must supply the grounds upon which the case is to be decided. Amongst the Kafirs, the accused party *himself* is subjected to a most rigorous cross-examination, varied and repeated at the pleasure of his examiners, and every advantage is taken of his mistakes or self-contradictions.

The conduct of a Kafir law-suit through its various stages is an amusing scene to any one who understands the language, and who marks the proceedings with a view to elicit mental character.

When a man has ascertained that he has sufficient grounds to enter an action against another, his first step is to proceed, with a party of his friends or adherents, armed, to the residence of the person against whom his action lies. On their arrival, they sit down together in some conspicuous position, and await quietly the result of their presence. As a law party is readily known by the aspect and deportment of its constituents, its appearance at any kraal is the signal for mustering all the adult male residents that are forthcoming. These accordingly assemble, and also sit down together, within conversing distance of their generally unwelcome visitors. The two parties perhaps survey each other in silence for some time. "Tell us the news!" at length exclaims one of the adherents of the defendant, should their patience fail first. Another pause sometimes ensues, during which the party of the plaintiff discuss in an undertone which of their company shall be "opening counsel." This decided, the "learned gentleman" commences a minute statement of the case, the rest of the party confining themselves to occasional suggestions, which he adopts or rejects at pleasure. Sometimes he is allowed to proceed almost uninterrupted to the close of the statement, the friends of the defendant listening with silent attention, and treasuring up in their memories all the points of importance for a future stage of the proceedings. Generally, however, it receives a thorough sifting from the beginning, every assertion of consequence being made the occasion of a most searching series of cross questions.

The case thus fairly opened, which often occupies several hours, it probably proceeds no farther the first day. The plaintiff and

his party are told that the "men" of the place are from home; that there are none but "children" present, who are not competent to discuss such important matters. They accordingly retire, with the tacit understanding that the case is to be resumed the next day.

During the interval, the defendant formally makes known to the men of the neighbouring kraals that an action has been entered against him, and they are expected to be present on his behalf at the resumption of the case. In the meantime, the first day's proceedings having indicated the line of argument adopted by the plaintiff, the plan of defence is arranged accordingly. Information is collected, arguments are suggested, precedents sought for, able debaters called in, and every possible preparation made for the battle of intellects that is to be fought on the following day. The plaintiff's party, usually reinforced both in mental and in material strength, arrive the next morning and take up their ground again. Their opponents, now mustered in force, confront them, seated on the ground, each man with his arms by his side. The case is resumed by some "advocate for the defendant" requiring a re-statement of the plaintiff's grounds of action. This is commenced, perhaps by one who was not even present at the previous day's proceedings, but who has been selected for this more difficult stage of the case on account of his debating abilities.

"Then comes the tug of war." The ground is disputed inch by inch; every assertion is contested, every proof attempted to be invalidated; objection meets objection, and question is opposed by counter question, each disputant endeavouring, with surprising adroitness, to throw the burden of *answering* on his opponent. The Socratic method of debate appears in all its perfection, both parties being equally versed in it. The rival advocates warm as they proceed, sharpening each other's intellects, and kindling each other's ardour, till, from the passions that seem enlisted in the contest, a stranger might suppose the interests of the nation to be at stake, and dependent upon the decision.

When these combatants have spent their strength, or one of them is overcome in argument, others step in to the rescue. The battle is fought over again on different ground; some point, either of law or evidence, that had been purposely kept in abeyance being now brought forward, and perhaps the entire aspect of the case changed. The whole of the second day is frequently taken up with this intellectual gladiatorship, and it closes without any other result than an exhibition of the relative strength of the

opposing parties. The plaintiff's company retire again, and the defendant and his friends review their own position. Should they feel that they have been worsted, and that the case is one that cannot be successfully defended, they prepare to attempt to bring the matter to a conclusion by an offer of the smallest satisfaction the law allows. This is usually refused, in expectation of an advance in the offer, which takes place generally in proportion to the defendant's anxiety to prevent an appeal. Should the plaintiff at length accede to the proposed terms, they are fulfilled, and the case is ended by a formal declaration of acquiescence.

If, however, as it frequently happens, the case involves a number of intricate questions, that afford room for quibbling, the debates are renewed day after day, till the plaintiff determines to appeal to the decision of the *umpakati*, who has charge of the neighbouring district. He proceeds with his array of advocates to his kraal, and the case is re-stated in his presence. The defendant confronts him, and the whole affair is gone into anew on an enlarged scale of investigation. The history of the case, the history of the events that led to it, collateral circumstances, journeys, visits, conversations, bargains, exchanges, gifts, promises, threatenings, births, marriages, deaths, that were taken, paid, made, given, or occurred in connection with either of the contending parties, or their associates, or their relatives of the present or past generation, all come under review, and before the "court of appeal" has done with the affair, the history, external and internal, of a dozen families, for the past ten years, is made the subject of conflicting discussion.

The "Resident Magistrate" decides the case, if he can, after perhaps a week's investigation; but if not, or if either party be dissatisfied with his decision, an appeal can still be made to the chief "in council."

Should this final step be resolved on, the appealing party proceeds to the "Great Place." Here, however, more of form and ceremony must be observed than before. As soon as he and his company arrive within hearing, he shouts at the full extent of his voice, "Ndimangele!" (*I lodge a complaint.*) "Umangele 'nto nina?" (*You lodge a complaint of what?*) is the immediate response, equally loud, from whichever of the "men of the Great Place" happens to catch the sound. A shouting dialogue commences, the complainants approaching all the while till they have reached the usual position occupied on such occasions, a spot at the respectful distance of some fifty paces from the council hut. The dialogue

lasts as long as the *umpakati* chooses to question, and then ceases. The complainants sit still. Bye and bye someone else comes out of the house and sees the party. "What do *you* complain about?" "We complain about so and so;" and the case is begun afresh. He listens and questions as long as he likes, and then passes on. A third happens to be going by. The enquiry is repeated, and *again* a statement of the case is commenced. The *umpakati wakwomkulu* questions as he goes, and without stopping continues his interrogations till he is out of hearing. This tantalizing and seemingly contemptuous procedure is repeated at the pleasure or caprice of any man who chances to form one of the "court" for the time being, and it would be "contempt of court" to refuse to answer. At length, when it suits their convenience, the councillors assemble, and listen to the complainant's statement. The opposite party, if he has not come voluntarily to confront his accusers, is summoned by authority. On his arrival the former processes of statement and counter-statement are repeated, subject to the cross-examining ordeal through which old Kafir lawyers know so well how to put a man. The chief meanwhile is perhaps lying stretched on a mat in the midst of his council, apparently asleep, or in a state of *dignified* indifference as to what is going forward. He is, however, in reality as wide awake as any present, of which he can generally give proof should he see fit to assume the office of examiner himself. He sometimes does so, after having listened to the debates that have taken place in his presence, and then decides the case. At other times he forms his decision upon the result of the investigation conducted by his councillors, and takes no part in the case but to pronounce judgment. On this being done, the party in whose favour judgment is given starts up, rushes to the feet of the chief, kisses them, and in an impassioned oration extols the wisdom and justice of his judge to the skies. A party from the "Great Place" is sent with him to enforce the decision, *and bring back the chief's share of the fine imposed*, and the affair is at an end.

3. MARRIAGE CUSTOMS

Amongst the national usages of the Kafirs, as amongst those of other tribes and nations, the customs connected with Marriage rank first in importance, as influencing the entire social condition of the people. Some account of these will form the subject of the present article.

Polygamy is universally allowed throughout all the tribes, nor is there any legal limit to the number of wives a man may take. The actual number generally bears some proportion to the wealth of the husband; not, perhaps, so much from its regulating his desire to increase it, as from its determining the inclinations of those who have marriageable daughters to dispose of; for as the refusal of a proffered bride is regarded as an insult to her family, to reject one when sent would often involve the party doing so in considerable trouble, and might, indeed certainly *would*, in some cases, expose him to the danger of seeing his cattle swept off to wipe away the affront. On the principle, therefore, "of two evils to choose the least," an old man sometimes consents to take another and a young wife, when his inclinations would lead him to demur. For in Kafirland at least, such an enlargement of the domestic establishment by no means guarantees an increase of domestic happiness. The jealousies and rivalries of the spousal "sisters," as they designate each other; and the still greater evils flowing in such a state of society from such unnatural associations, often prove the plague of the husband's life, and frequently result in the dismissal or abandonment of such of his wives as cause him the greatest annoyance. The average number of wives to each married man amongst the common people is about three. Some of the rich *amapakati* are known to have as many as ten, and some of the chiefs twice that number.

Concubinage is also allowed, and amongst the chiefs exists to a considerable extent. Their concubines are usually women selected from amongst their own people, who have become objects of attraction to their rulers, but whose parents are not of sufficient consideration to demand on their behalf the more honourable rank of wives. It is, however, by no means uncommon for a chief to raise a favourite concubine to that rank, after some years' cohabitation. Amongst the common people, concubines consist of two classes, the voluntary, and the bestowed. The former are those who have become such by personal consent, and arrangement with the relatives in whose guardianship they are. The latter are such as the chiefs have authoritatively allotted to the young men of their retinue, who have acquired their special favour during their term of service at the "Great Place"; and who have therefore obtained permission to select female companions from amongst their acquaintance, without incurring the expense of the marriage dowry. As concubines have a legal standing, their offspring are not considered illegitimate. They rank, however,

inferior to the children of the "married wives"; nor can they inherit, except in default of male issue on the part of the latter.

In a preceding article, an account is given of the peculiarity in the law of inheritance, which arises from the investiture of certain of the wives of the chiefs with a rank above the rest. The same custom obtains throughout all the grades of Kafir society. The "great wife," the "wife of the right hand," and the representative of "the house of the father," are found amongst all classes, should the husband have as many as three wives; and should they exceed that number, the children of the rest have no claim on their father's property beyond the portions given to them by their father himself during his lifetime.

The younger sons of a family are not competent to marry while their elder brother remains single. The order of seniority is not, however, observed any farther. The firstborn once "settled in life," the rest may follow, as inclination and circumstances lead. The origin of this custom is probably to be found in the priority of claim which the eldest son, in virtue of his primogeniture, is deemed to have upon his father's aid in providing a dowry.

The business of negotiation in matrimonial affairs differs accordingly as the proposal comes from the representatives of the bride, or from those of the bridegroom. A man sometimes fixes his desire upon a young woman, and at once proposes to her guardians that she shall be sent to his residence in the ordinary manner. If his proposal be accepted, it serves to cut short some part of the ceremonies afterwards to be described.

It is sometimes the case, also, that two young men select as the object of their choice the same young woman. They commence a course of rival bidding for the father's consent, and the daughter's affections. The cattle of the respective candidates are sent to the father of the object of their rivalry by one or two at a time, as may be necessary in each case to advance a step beyond the opposite side. When the highest bidder has reached his maximum, the cattle of both are surveyed together, and the lady is called upon to declare her own choice of the candidates themselves. If this should happen to coincide with that of her parents with respect to the cattle, so much the better. If not, a contest commences of persuasion *versus* authority. It *sometimes* occurs that the entreaties of the daughter prevail over the avarice of the father, but such cases, the Kafirs admit, are rare. Kafir fathers have for the most part their full share of those principles of human nature which in more *enlightened* countries lead parents to sacrifice

the "foolish" inclinations of their children at a golden shrine; and accordingly the highest bidder usually gains the prize. The cattle of the unsuccessful candidate are then driven *by the fair one herself*, arrayed in her best ornaments, to the home of their owner, and left in his kraal. This is the *coup de grace* of rejection, and is a piece of refinement in punishing a stingy suitor, worthy the notice of the *under-valued* ladies of more civilized nations.

Such cases as the above often occur. In the ordinary course of things, however, negotiations are begun by the father of the bride, and especially so, if she be a person of rank. The process is frequently a very lengthy one. A husband having been fixed on, the first step is to send a person by night to his residence, with an introductory present called *umlomo*, or "the mouth." This present, consisting of ornaments, such as beads, or brass wire for bracelets, must be left secretly, as otherwise etiquette would require its being returned. Whether or no this custom has had its origin in the excessive bashfulness of the men does not appear. The discovery of the "mouth," after its bearer is gone, is frequently the first intimation of a proposed matrimonial alliance, and it may still be unknown from what quarter the proposal comes. Sometimes the requisite information is left in the neighbourhood. At other times, where more caution is required, a visitor, or rather a passer by, calls the next day, *quite accidentally*, it should appear. In the course of "telling the news," in compliance with the universal requisition made upon strangers, he mentions *cursorily* that he happened to hear so and so drop some hints of an intention to send his daughter to be married in the neighbourhood. Of course he *happens* also to know something of the lady herself as of her family, and can give some information respecting her personal attractions, and other good qualities. He may even be gallant enough to advocate her cause, although of course, quite disinterested. From the character of the conversation that follows, he is soon able to gather in what way these first advances are received, and what are the probabilities of a prosperous issue to the negotiation. If the ambition of the lady's friends should have led them to aim at too high a mark, (for family pride is by no means too refined a feeling for a barbarian breast), or if other circumstances should determine the selected party to decline the alliance, the "mouth" is sent back to tell its owner of her rejection. If, on the contrary, either the desires or the fears of the bridegroom elect induce him to regard it favourably, the way is open for the next step in this interesting and important business.

It should not pass unremarked, that when the proposed bride is a chief's daughter, the introductory present is not left secretly, but dropped in the presence of those to whom it is sent. They instantly endeavour to seize the bearer, who takes to his heels, pursued by all the young men of the place. Should he outstrip them, and escape capture, his credit is saved. But if he is caught, his hands are tied behind him, the present bound to his back, and himself sent home to become the laughing stock of his associates, of whom the female portion are not the least severe, upon his failure. The "mouth" is then entrusted to the care of some light-footed messenger, while the former one bears his disgrace as he can.

The next step in the process is the arrival, at the kraal of the bridegroom elect, of two or three persons, usually women. These also arrive in the night. They seat themselves near one of the huts in the open air in silence, and remain there till discovered by some of the people of the place. On being questioned, they give some fictitious account of themselves. On being invited to lodge for the night, they decline. This is the intimation that they form the party sent to *hlolela* or "spy for" the bride. A hut is then appropriated to their use, and they there await the result of this second step. Weeks sometimes elapse, during which they have little or no intercourse with the people of the place, farther than is necessary to obtain food. Now and then, one of the party pays a visit home to report progress. She must not, however, be seen to depart, nor to arrive on her return. In the mean time the men of the place have resolved themselves, assisted by their neighbours, into a "committee of ways and means," on the subject of the dowry. When this important matter has been fully discussed, the "spies" are informed that the bride may come. This information being transmitted, the *uduli*, or bridal party, makes its appearance, consisting of the bride herself, a number of young female companions, the representatives of her father or guardians, and some young men as attendants or messengers. The party takes possession of the hut occupied by the "spies." In due time the master of the kraal sends word that the bride is to present herself "to be seen." She accordingly proceeds with one or two of her companions to where the men are assembled. She kneels before them at a short distance, uncovered from the waist upwards, while her defects or beauties of person are freely criticised. When this is over, she retires, leaving behind her a present of beads or buttons. She is afterwards called for by the women, and a similar ordeal is endured, another present being left on retiring. In the

meantime the dowry negotiation is going forwards between the representatives of the two parties; the demands of the one, and the statement of difficulties by the other, occupying a considerable time. At length the men of the bridal party are summoned to the cattle kraal. An ox is caught in their presence. They look on in silence and retire. The animal is slaughtered, and the meat sent to them. This is the ratification of the contract, and the signal for the marriage festivities to commence. The presents of the father of the bride to his son-in-law are produced. These are, one head of cattle for a kaross, another, the hair of the tail of which is to be worn round his neck as a charm, and, if the bride be a person of rank, a number of cows to furnish a milksack and its contents for his sustenance. The number of the latter varies from two or three to ten, according to the wealth or ostentation of the party who sends them. The neighbours are invited to the wedding, and the dancing and feasting begin. These festivities usually last three days among the "commonalty." When a chief of rank is married they continue eight or ten days. On the last day, when the sun is declining, the ox races are held. While the youth and more fiery of the elder guests are absent at this sport, the *ukutshata* takes place. This is the great ceremonial of the occasion, but strikingly characteristic of the barbarism of the people. The bride, and two of her companions as supporters, walk in procession. Their only clothing consists of the skins of the oribie, tied round the loins. Their heads are bare, and their bodies covered with light red ochre, which presents the more remarkable appearance from the bright yellow of the oribie skins. They proceed arm in arm, "with solemn steps and slow," towards the gate of the cattle kraal, the bride carrying in her hand a single assagai. Their air is that of victims about to be offered in sacrifice, for which they would certainly be taken by any one ignorant of the customs of the country. As they proceed on their way, one of the male attendants removes any sticks or stones that may chance to lie in the path. On reaching the kraal gate, the bride throws the assagai within it, and leaves it there. The procession then moves towards where the men are assembled, the women of the place preceding the bride, and imitating in dumb show her future duties, such as carrying wood and water, and cultivating the ground. On reaching the assembly of the men, the procession halts, and the bride is lectured on her future conduct by any one of them who chooses. There is no deficiency of coarse brutality of remark in this part of the ceremony, which continues as long

as the lecturers please, the bride standing before them in perfect silence. It is, however, the *finale* of the ceremony. On receiving permission to retire, the procession returns to the place from which it set out, the guests depart, the bride takes possession of a new hut that has been erected for her, and assumes her assigned position in the domestic establishment of her new "lord and master."

The number of guests present at these festivities is sometimes very great. At the marriage of chiefs of high rank, they amount to thousands. On such occasions the greater portion of the tribe assembles, and all the other chiefs within one or two days' journey are expected either to attend in person, or send their racing oxen. To neglect to do either would be considered an affront. The bridegroom and his friends provide the slaughter cattle for the feast; but the guests bring their own milch cows and milksacks. From four or five to fifty head of cattle are slaughtered, according to the wealth and rank of the parties.

Such is the marriage ceremonial in the "respectable circles" of Kafir society. There is also an abridged form, in which the *ukutshata* and the ox racing are omitted, and the feasting and dancing much curtailed. This, however, is considered a discreditable mode of getting married, and is therefore chiefly confined to the poorest of the people.

There is another custom connected with the marriage of chiefs, or rather supplementary to it, very characteristic of the people; but which, like several others, is falling into disuse among the frontier tribes. At the close of the first year of marriage, the male relatives of the bride muster and form a party to go and pay the congratulatory visit. On their coming in sight, however, a rival muster takes place of the friends and retainers of the husband, who go out to resist the advance of the other party. The result is a cudgel match on a large scale, from pure friendliness, of course, but which nevertheless does not prevent heads and limbs from being broken. Should the friends of the bride drive the other party off the ground, the welcoming present of cattle made by the husband is expected to be so much the larger; but if the opposite side win the day, the demands of the congratulators are proportionately lessened.

The general Eastern custom of paying a dowry, or marriage price, for their wives, obtains throughout the Kafir tribes. Cattle, the number varying according to the rank of the bride, from ten to a hundred head, constitute this dowry; and the desire of obtaining as many cattle as possible, usually leads her father or other

guardians to send her to the richest man their own rank will warrant, without any regard to her own inclinations, or the age, disposition, or domestic circumstances of her intended husband. As this custom has been considered to reduce the wife to a mere article of merchandise, it has been condemned in strong terms, on the ground of its degrading influence. It must be acknowledged that although the *principle* of the usage has the sanction of patriarchal antiquity, and is mentioned, without prohibition, in the Old Testament, its *circumstantials*, as existing amongst the Kafir tribes, partake of the grossness to be expected in a barbarous state of society. It is but fair, however, that the whole case should be exhibited. The transaction is not a mere purchase. The cattle paid for the bride are divided amongst her male relations, and are considered by the law to be held in trust for the benefit of herself and children, should she be left a widow. She can accordingly legally demand assistance from any of those who have partaken of her dowry; and her children can apply to them on the same ground for something to "begin the world with." Nor can the husband ill-treat her with impunity. On experiencing any real grievance, she can claim an asylum with her father again, till her husband has made such atonement as the case demands. Nor would many European husbands like to be subjected to the usual discipline on such occasions. The offending husband must go in person to ask for his wife. He is instantly surrounded by the *women* of the place, who cover him at once with reproaches and blows. Their nails and fists may be used with impunity, for it is the day of female vengeance, and the belaboured delinquent is not allowed to resist. He is not permitted to see his wife, but is sent home, with an intimation of what cattle are expected from him, which he must send before he can demand his wife again. And this process, should it be necessary, may be repeated over and over again, to be closed, in incorrigible cases (should the woman have borne any children), by the father's finally detaining his daughter and her dowry together. So that the husband may at last lose both wife and cattle.

SECTION 2

TAMBOOKIE USAGES[1]

PRELIMINARY REMARKS

For convenience, Kafir laws may perhaps be divided into criminal and civil, as with us; but then the cases classed under these two heads, will be a very different classification from ours.

Criminal cases will comprise such only as are prosecuted by the chiefs themselves, and the fines for which are claimed by them as their inalienable right; and which fines are denominated *Isizi*. Such cases are probably all included under the heads of national offences, all crimes of a political nature, breaches of the peace, charges of sorcery, etc., and crimes against the persons of individuals.

All other cases will come under the head of civil cases. These are prosecuted by the plaintiffs, and the fines, or compensation, are always awarded to, and claimed of right by them; and the chiefs have no right or claim to any part thereof. But if the plaintiff obtains judgment in his favour, he has to pay the *Imisila*, or sheriffs, employed to execute the sentence of the court, out of the fines awarded to him; and which demand generally amounts to about one-third of the value of the fine. If judgment is given in favour of the defendant, there are no law expenses to pay, because there being no sentence to enforce, there is no occasion to employ sheriffs. The decision of the court is then simply, "no case."

Kafir law, strictly speaking, recognises no other punishment than that of fine or compensation. "Eating up," and putting individuals to death for imaginary crimes, such as sorcery, etc., are mere arbitrary acts of the chiefs. "Eating up" is however absolutely necessary, when a kraal or clan resists the sentence or orders of the chief, as he has no other means of upholding his authority and enforcing the law. The grand principle of Kafir law is *collective responsibility;* and on this principle depends in a very great degree, the peace and safety of society. Do away with this, while the Kafirs still continue in their present clannish and barbarous state, and they would immediately become unman-

[1] [Reprinted from "A Compendium of Kafir Laws and Customs." The present selection is from the notes of Mr. WARNER, dated Tambookie residency, December 1st, 1856.]

ageable. Every clan is collectively responsible to the paramount chief, and every kraal is answerable for each member thereof.

The proof of innocence rests in much greater degree with the accused than is the case with us; evidence of guilt being far more difficult to procure; for the idea of a Kafir informing or giving evidence against his neighbour, or one of his own kraal, is out of the question, — unless it becomes necessary for him to do so, in order to clear himself, a friend, or the "umpakati" whose retainer he may be; neither is there any law to force him to do so.

Defendant, plaintiff, and witnesses are allowed to tell as many lies as they like, in order to make the best of their case; they have no judicial oaths; and there is consequently no punishment for perjury: and it is in cross examination, and in sifting out the truth from such a mass of lies and misrepresentation, that the ability and cleverness of Kafir lawyers shine forth.

Plaintiff and defendant are allowed to state their case in their own way, and to produce any kind of evidence; and the court has the right to cross examine in any manner it may think proper, and to put whatever leading questions it chooses. In fact, any thing is justifiable which is done by the court with the aim of eliciting the truth; and any thing is justifiable on the parts of the plaintiff and defendant, which may be done by them with a view to the bettering of their case.

The parties concerned, have the right to compromise any *civil* case, without bringing it before either the "Amapakati," or the chief; but they have no right to compound for *criminal* cases, as that would be robbing the chief of part of his revenue. Civil cases may be adjudicated by any "Umpakati," if the parties agree to lay the case before one; but there is an appeal from such decision to the chief, and no court of "Amapakati" has the power to use force to carry out its sentence, without permission from the chief. The "Amapakati," however, often levy the fine for assault (which is a criminal case) and retain it for their own benefit, but this is not legal, and the chief can, at any time, demand it to be given up to him.

Kafir law is chiefly a law of precedents; (for although the reigning chief has the power to make new laws, he seldom exercises this prerogative); and there appears to be no uncertainty whatever in its administration. It is very defective in many respects; yet on the whole it is well suited to the present state and circumstances of the Kafir tribes. And although it is very desirable that it should be superseded by the introduction of a modified form of

our superior laws; yet this must be a work of time, and can only be accomplished by degrees, and as the people progress in civilization. The greatest defect of Kafir law is, that it is administered by the same parties who have the power to make new laws or alter the old ones, viz. the chiefs.

The laws, however, connected with their *system of superstition*, as well as many of their social and domestic customs, are highly injurious, subversive of morality, and entirely inimical to Christianity and civilization; and every effort, consistent with maintaining the peace and tranquillity of the country, ought to be made for their gradual abolition.

In conclusion I may remark that there may be slight variations in its details and administration among the different tribes; and that my notes and compendium are in accordance with Tambookie usages. Kafir law is however substantially the same among all the Amaxosa tribes.

1. CRIMINAL CASES

a. HOMICIDE

Kafir law seems to make little or no distinction between wilful murder and any other kind of homicide; unless it be, perhaps, that in purely accidental homicide, the full amount of the fine may not be so rigidly insisted upon. All homicide must however be atoned for; the principle assumed being, that the *persons* of individuals are the property of the chief, and that having been deprived of the life of a subject, he must be compensated for it. The fine for a male is seven head of cattle, and for a female ten head; the life of a female being more valuable than that of a male, on account of the dowry obtained for her at her marriage.

Compensation for all kinds of homicide is so universally insisted upon, that should even an "Igqwira," or person charged with the crime of sorcery, die under the torture to which he is always subjected, or be killed, without the sanction of the chief, the "Isizi," or atonement, must be paid, unless the chief thinks proper to forego his claim, and which he sometimes does in such cases. The case is not altered in "faction fights," where for each individual who may be killed, the fine is inflicted upon all the parties engaged; unless such fight was authorized by the paramount chief himself. And even in death occurring from natural causes, unless the chief is formally made acquainted therewith, immediately on such an event happening, the "Isizi" can be demanded.

This kind of law does not at all accord with our ideas of justice: and it is one of the most defective parts of Kafir law. And yet, its practical working must be good, for the Kafirs are the opposite of bloodthirsty; as the shedding of blood, except in times of war, is a rare occurrence among them.

b. ASSAULT

Under this head will be included every kind of bodily injury less than death, inflicted by one individual upon another, from the most severe, down to a single blow with a stick. Nothing seems to justify one man striking another, not even in self defence; and both parties are generally fined, unless it be clearly proved that the assault was all on one side. The fine is from one to five or six head of cattle.

c. RAPE

This is a crime; but it must be clearly proved, and then the fine is not more than from one to three or four head of cattle.

d. ABORTION

The procuring of abortion, although almost universally practised by all classes of females in Kafir society, is nevertheless a crime of considerable magnitude in the eye of the law; and when brought to the notice of the chief, a fine of four or five head of cattle is inflicted. The accomplices are equally guilty with the female herself.

e. UNNATURAL CRIMES

These are almost entirely unknown. Indeed during a residence of twenty-five years among the Tambookies, I have only heard of one case of the kind. This was a case of sodomy. I think the fine was five head of cattle. It was considered a criminal case, and the fine was accordingly claimed by the chief.

f. INCEST

Misdemeanours which would come under this head with us, are not punishable by Kafir laws; but they have a far more powerful preventative in their superstitious fears, which teach them to dread that some supernatural evil will befall the parties committing such acts; they lose caste as it were, and are considered in the light of sorcerers: hence such crimes are seldom committed.

Consanguineous marriages are prohibited by custom rather than by law; and if the parties are not too nearly related, and resolutely persist in their determination to marry, and if the man is prepared to pay pretty dearly for his wife, they generally succeed in gaining their point. Such cases are however very infrequent.

Relationship by *affinity* merely, and not by *blood*, presents no obstacle to marriage, and a man may even marry two sisters at the same time.

2. CIVIL CASES

a. ADULTERY

This is a crime against the property of the husband, and is, as with us, a civil case. The fine is from one to three or four head of cattle, according to the rank of the husband.

If pregnancy be proved to have resulted from such illicit connection, the fine is from seven to ten head.

The child in such cases belongs to the husband, who, after receiving the fine, is bound to provide for it. Adultery is only a crime when committed by the wife. The husband has the right to cohabit with as many women as he thinks proper; provided they are not the wives of other men. A man seldom or never divorces his wife for this crime.

b. SEDUCTION OF VIRGINS

Seduction of virgins, and cohabiting with unmarried women and widows, are not punishable by Kafir law, neither does any disgrace attach to either sex by committing such acts. Indeed they have no name for virgin in their language, and when a girl arrives at the state of puberty, the fact is announced by a public festival. . . . This promiscuous intercourse of the sexes is however subject to certain rules and customs; but even when committed in a clandestine manner it is not punishable; nor, as I before stated, does any disgrace attach to the parties concerned.

If however pregnancy ensues, the father or guardian of the woman, can demand a fine of one head of cattle from the father of the child. The child then belongs to its father; and when it is sufficiently grown, he can claim it, by paying two or three head of cattle for bringing it up, &c. If no such fine is paid, then the child is the property of the parents or guardian of its mother.

The birth of children does not, however, so frequently follow from this kind of intercourse as one would suppose, on account

of the almost universal practice of procuring abortion, as soon as it is known that pregnancy has taken place; and they have herbs which cause abortion with little or no danger to the woman herself, if administered within the first two or three months.

c. THEFT

All kinds of theft will come under the head of civil cases. Seizing property by force on the plea of retaliation, taking the law into one's own hands, or on any other pretence whatever, does not come under the head of stealing. Property thus seized must however be restored, or compensation given to its value. In all such cases, the unfortunate plaintiff has to pay the law expenses, although he seldom gets the full amount of his property restored to him. In all cases of theft of live stock, the law allows a fine of ten for one; but the full amount of this fine is seldom enforced in the present day, especially when the number stolen is more than one or two head.

In cases of petty thefts, the fines inflicted are very insignificant, and seldom amount to more than the value of the articles stolen.

The stealing of live stock is the most important law case in Kafirland; and the following are the principal points to be attended to.

If the property is recovered uninjured, no fine is paid; and if part of the property is restored uninjured, the thief is only fined for the missing or injured part.

The custom of demanding payment for the "spoor," where colonial property is concerned, although it may be restored uninjured, has been introduced by the Colonial Government, and agreed to by the chiefs; and it is of the utmost importance that it should be continued. And if possible, it should also be introduced in cases of Kafir versus Kafir, among those tribes which are under our control.

The custom of handing the "spoor" over to the first kraal, and expecting them to pass it on to the next, etc., is also an innovation introduced by the colonists, but which appears to be absolutely necessary, otherwise colonial property would never be recovered as no kraal, or clan, would ever give information respecting, or assist in recovering, the "white man's" property, were they not obliged to do so; and it is only carrying out their own principle of "collective responsibility." Among themselves, the owners of the stolen property have to follow the "spoor" whithersoever it goes; and the only assistance they can demand from others is, that when

it approaches within a short distance of a kraal, say five or six hundred yards, they inform the people of the said kraal of the "spoor," and they are bound to assist in passing it on beyond their kraal, to about the same distance as above mentioned, when they return, and the owners proceed on alone. If the people of a kraal refuse to assist in tracing the "spoor" past their kraal in the manner described, and the owners cannot succeed in tracing it any farther, they are then considered as the guilty party, and the charge of the theft is at once laid against them. Making the kraal nearest to which the "spoor" has been obliterated pay for the theft, without any other proof of their guilt, is another necessary innovation of ours, arising out of the before mentioned disinclination of the Kafir to give information against the stealer of colonial property. Among themselves, in order to establish a case against a kraal, the "spoor" must be traced to within its precincts at least; and even then every exertion must be made by the owners of the stolen property, in conjunction with the people of the said Kraal, to pass it on. And even when unsuccessful in doing this, it is very desirable that some additional proof of guilt should be obtained, as the chiefs frequently throw out cases where there is no other proof of guilt than that the "spoor" was traced on to the kraal. The simple fact of the "spoor" having been obliterated by cattle is not of itself sufficient to establish a case against the owners of such cattle; although we have made it so in cases where colonial property is concerned.

Concealing a theft is no crime; but assisting to commit one is. Neither is it a crime simply to partake of the flesh of a stolen beast, knowing it to be such, unless the parties are in some way connected with the theft as accomplices.

In cases of theft (or indeed of any other crimes to which the principle of collective responsibility is applicable) it is not necessary to identify the thief; nor is it necessary that he should be produced, or even known. It is sufficient if a case has been clearly established against a kraal.

d. INJURY TO PROPERTY, TRESPASS, ETC.

Kafir law requires that all wilful injury to property be compensated for to the full value of the property injured. If you set fire to the grass, and accident to person or property is occasioned thereby, the law will require you to make compensation for the injury done. If your dogs injure person or property, and you did

not exert yourself to prevent it, when you might have done so, a case lies against you. But the law does not appear to demand compensation for what is clearly proved to have been a purely accidental injury to *property*, although it will do so in accidental injuries to the *persons* of individuals, if the injury is of a serious nature; as the latter would come under the head of criminal cases, and therefore could only be overlooked, or the fine remitted, by the chief himself.

Trepass or injury done to cultivated lands or standing crops by live stock is not actionable; but as the women, who have charge of the cultivated fields, have the right, sanctioned by immemorial custom, to drive the cattle thus trespassing into the fields of their owners, trespasses of this kind are not of frequent occurrence. This singular custom is, I believe, the only instance in which Kafir law justifies, or rather allows of, retaliation.

To make use of fallow lands originally brought under cultivation by another, if the owner has abandoned them, is not a trespass, and is a very common practice; but should the original cultivator return and claim them, they must be given up to him when the crops have been reaped.

e. MARRIAGE

Marriage among the Kafir has degenerated into slavery, and is simply the purchase of as many women by one man as he desires, or can afford to pay for.

The price or dowry paid for a wife is left very indefinite. It is not all paid at the time of marriage, but by degrees; and the husband appears to be for a long time liable to fresh demands for cattle, under some pretext or other. Ten head is, however, the ordinary price among the commonalty; but twenty or thirty are frequently demanded for chiefs' daughters; and chiefs of high rank have to pay from thirty to fifty head, and even more, for their wives, when they marry the daughters of chiefs of equal, or superior, rank to their own.

The dowry or price paid for a wife is called the "Ikazi," and which name distinguishes it from the "Ikebe," or price paid for the temporary use of a woman or concubine, who is called an "Ishweshwe," the name of a proper wife being "Umfazi."

The payment of the "Ikazi" is the legal proof of marriage, and is the only thing really necessary thereto; although dancing, feasting, &c., are generally indulged in on such occasions.

Courtship as it exists with us is unknown. Sometimes a man chooses for himself, and intimates his choice through a third person to the father or guardian of the girl; but the usual way is for the friends of the girl to consult together and select a husband for her, and to send her to the man thus chosen.

The girl herself is seldom or never consulted about the matter; and a man to whom a girl is thus sent, seldom refuses to receive her.

Until all demands with regard to the dowry have been satisfied, the father or guardians of the woman have a legal right to detain her in their custody, should they succeed in getting peaceable possession of her person; but they must not use force for this purpose. This singular custom is called "Ukuteleka," and it leads to a vast amount of domestic misery and wickedness.

Although in theory, perhaps, the power of the husband over the wife is considered absolute in every thing but taking her life; yet in reality there are many checks to his power. His own friends, will interfere to prevent his indulging in any great degree of brutality towards her. If he mutilates her, or inflicts any permanent injury on her body, the chief will demand the "Isizi" or blood atonement. If also she can succeed in running away to her friends, they have a legal right to make an additional demand of cattle to those already paid for her, and to detain her until such demand has been complied with. And if a woman utterly refuses to live with her husband, on account of ill usage, there is no law to compel her to do so; and the only remedy he has, is to demand that the dowry be refunded to him; but the law will not support him even in this, if she has borne him a family of children. Kafir husbands are not however generally cruel to their wives in the common sense of that word. Their wives are nevertheless mere slaves, and have all the drudgery and laborious work to perform.

If a wife dies without having borne children to her husband, the law will support him in his demand for the dowry to be returned to him; unless she has been married to him a considerable number of years.

f. DIVORCE

A man may divorce his wife at pleasure, without assigning any reason for so doing. And yet divorces are not frequent among them. First, because of the great difficulty there is in recovering the dowry, even when the husband is entitled to demand it, and which he is not, if his wife has borne him children. And secondly,

because by so doing he deprives himself of her labour as his servant. Marrying another wife is therefore the more common plan adopted to humble and annoy a wife, when she is inclined to be independent and unruly.

A Kafir seldom divorces his wife for adultery; he prefers receiving the fine on such occasions, and giving her a good thrashing.

The wife also seems to have the power of divorcing her husband, according to what I have said bearing on this subject under the head of marriage. In case of a woman thus leaving her husband, if she marry again, the law will order the former dowry to be restored, although she may have borne children to her former husband.

In all cases of divorce the children belong to the father, and are entirely under his control.

g. INHERITANCE

It may be thought that on account of the universal practice of polygamy, the law with regard to inheritance would be very confused and uncertain; but nothing can be more plain and definite.

Each wife has a separate establishment. If a man has three wives, their establishment will be thus distinguished: — The principal or great wife's establishment will be called the "Ibotwe," the next in rank will be called the "right hand," and the third in rank the "left hand house." If he has less than three wives the above principle will nevertheless be the rule or guide as far as circumstances will allow. If he has more than three, they will be attached to one or other of the three principal houses; but each of these minor houses will nevertheless have its own separate establishment.

It is usual for the husband to apportion cattle to each of the three major houses, but he seldom goes beyond this: hence the minor houses are generally dependent in this respect upon the major houses to which they are attached. The eldest son of each house inherits all the property which has been allotted by the father to that house.

If the father has neglected during his life time, to declare in a formal and public manner, what portion of his property he has allotted to his several establishments, he may be said to die intestate; in which case the oldest son of the "Ibotwe," or principal house takes possession, as the heir at law, of the whole of his father's estate. But in this case he is bound to take charge of, and

provide for, all his father's establishments; which are, however, little burden to him, as the principal care of getting a living devolves on the women themselves.

Females can inherit nothing, but are themselves property. A married woman is the property of her husband; and when he dies, she becomes the property of his heirs; nor can she marry again without their consent.

Children belong solely to their father, and the mother has no claim whatever to them under any circumstances; and when the father dies, they pass together with his other property to his heirs. The dowries of the girls are claimed by the eldest son of the house to which they belong, unless they had been otherwise disposed of by the father during his lifetime.

The eldest son of a chief's great wife inherits the chieftainship of the tribe at his father's death.

The principal property among the Kafirs is live stock. The only inheritable landed property recognized by Kafir law, is what has been brought under cultivation, together with the homestead or site of the kraal. This may be claimed from generation to generation, and can be forfeited only by committing some political crime.

Should a man have no sons, his property is inherited by his father if still living; if not, then by his eldest brother of the same house; if there is no brother of the same mother, then the property is inherited by the eldest son of his father's great wife; in case of a failure of a male in that house, then by the eldest son of the next house in rank, and so on. In case of an entire failure of brothers, then the eldest brother of his father, born of the same mother as his father, comes in for the estate.

In case of a failure here, then his father's eldest brother belonging to the "Ibotwe," or principal house, becomes the claimant. If there is no male in this house, then the eldest brother of the next house, and so on, descending from house to house, according to their rank, until a male is found to inherit the property.

In case of an entire failure of male heirs, the estate is claimed by the chief, together with dowries obtained for the orphan daughters.

h. MISCELLANEOUS REMARKS

When an individual obstinately refuses to obey the orders of his chief, the kraal to which he belongs is held responsible for his conduct; and the headman thereof is expected to punish him; the

fine going, of course, to the chief. When a kraal, or clan, is rebellious, the custom of "eating up" is resorted to; which consists in collecting secretly an armed party, sufficiently strong, and proceeding in as stealthy a manner as possible to such kraal or clan, and seizing all their cattle, &c. If they resist, they are fired upon or assegaied without ceremony; and should any other kraal attempt to assist the rebels, they also would be eaten up.

"Eating up" is the only physical force which a chief has at his command to keep his people in order; and although often abused for political purposes, it is absolutely necessary, as being the only means he has of commanding obedience to the laws.

To maintain his popularity, and cause his people willingly to assist him on such occasions, the booty is always divided among the party engaged on such service, the chief reserving only a very small portion for himself. Hence the system of "eating up" is very popular among the Kafirs; and they are always ready to turn out and assist their chief in plundering their fellow subjects, without ever thinking of inquiring into the merits of the case.

The "Amapakati" have the privilege of going to "busa" at the great place; that is, they go and reside on the chief's kraal for a longer or shorter period, according to their own inclinations; and while they remain there, they form the court or ministry for the time being; during which time they enjoy many privileges. They settle all law suits laid before the chief, and assist him with their counsel in all state affairs; and they share in all the fines which may accrue to the chief during their ministry. They are also employed as "imisila," or sheriffs, to enforce the sentence of the chief, and they receive the fees appertaining to that office.

As the "Amapakati" do not take their wives with them when they thus go to "busa," women, as well as food, are provided for them by the chief. This has given rise to the outrageous and licentious custom of the "upundhlo," which consists in the chief sending out a number of the young men belonging to his personal staff, as a "press gang," to collect by force all the girls above the age of puberty, together with any other unmarried women they can lay hold of, and bringing them to the great place; where they are allotted to the councillors, and any other men, who may belong to the chief's staff; and with whom they are obliged to cohabit for the time being. After a few days, they are allowed to return to their homes, and another lot is hunted up. I may mention that the "upundhlo" is not frequently resorted to, when a sufficient number of volunteers can be obtained.

Refugees are always received by the chief to whom they fly, whatever might have been the nature of the crime for which they fled from their own chief; and they are never demanded; for if they should be, they would not be given up.

When a petty chief flies with his clan from his paramount chief, he sends an ox to the chief whom he has joined, as an acknowledgement of his having become his feudatory; upon which a tract of country is allotted to him.

In times of peace, if a refugee is guilty of taking any of his neighbours' cattle with him; or if any law suit was pending before he fled, such case may be laid before the chief to whom he has fled, and who generally settles such matters impartially, although there appears to be no international law binding him to do so.

When a Kafir wishes to leave his own chief and join another, he can only do so by flying at night in the most stealthy manner, if he has any live stock; for should his intention become known, he would most certainly be "eaten up."

The paramount chief of each tribe is above all law in his own tribe; he has the power of life and death, and is supposed to do no wrong. He is, however, subject in some degree to the paramount chief of the whole nation; and who again, in his turn, is subject to some control from the united council of his feudatory chieftains.

Excepting the reigning chief, as above explained, all other members of chiefs' families are amenable to the law; although, through interest etc., they often evade it.

Chapter XII

FANTI CUSTOMARY LAW[1]

I. PERSONS

(*a*) THE FAMILY

A Fanti family consists of all the persons lineally descended through females from a common ancestress, provided, that neither they nor those through whom they claim to be the descendants of the common ancestress had severed their connection with that root by —

(i.) Cutting Ekar, also called Kahire,
(ii.) Adoption,
(iii.) Partition, or
(iv.) Commendation.

(i.) *Cutting Ekar* is a particular mode of disowning any one's blood relation. When a man desires to disown a blood relative, he brings him before the elders of his town or village, and in their presence, as well as in the presence of the other members of his family, an ekar is cut in twain, and saying clearly, "We are now divided," he takes one-half and the disowned the other half. As soon as this ceremony is completed, the two persons have no more share or portion in the property of each other. Where a man is disowned, it affects him alone; but in the case of a woman, her issue is included, for the saying is, the children follow the mother's condition.

In *Welbeck* v. *Brown*, February 4, 1884, per Chief Robertson: "The cutting of the custom or ekar is a thing of the past in Cape Coast, as a sign of disownment. It was abolished by Governor Maclean."

(ii.) *Adoption* is practised by persons who have no next of kin to succeed to their property. The person adopted is usually of the

[1] [Reprinted from "Fanti Customary Laws: A Brief Introduction to the Principles of the Native Laws and Customs of the Fanti and Akan Districts of the Gold Coast, with a Report of some Cases thereon Decided in the Law Courts," by John M. Sarbah. William Clowes & Sons, Limited, London, 1904. This selection, apart from its systematic arrangement of the matters treated, is interesting in showing clearly the effect of contact of primitive custom with modern legal ideas.]

same clan as the person adopting, but if of a different clan, he assumes the name given him and becomes a member of his clan. To make adoption valid, it must be done publicly, and the person who wishes to adopt must not only get the consent of the family and parents whose child is about to be adopted, but he must clearly state before witnesses his desire and intention. A person cannot adopt another outside his tribe. On account of the custom of descent, which is traced through the female line, it is more usual to adopt females in preference to males.

(iii.) *Partition* is of rare occurrence, where persons live in the same town or locality. It takes place frequently where two branches of one family, living in separate localities, agree to relinquish to the other, all claim to whatever family property that other has in its possession.

E.g.: The family of Anan is divided into two branches, one residing in the family house at Chama, and the other branch living on the family land at Siwdu. As soon as the two branches agree to give up all claim to the property in each other's possession and retain what each has, none of the members of the Chama branch is considered member of the Siwdu family. The successors to each property will be selected from each branch. If one branch get into family difficulties, and the members thereof decide to sell their possessions, the other branch cannot stop such sale. But if at any time the right person to succeed to one branch of the family be a minor, then the headman or senior member of the other branch is, by his position, guardian. On failure of the legal successors, the two branches merge, and the existing line succeeds to both. Partition does not cause an absolute severance from one's family. In fact it is usual for the headman of one branch to preside at the ceremony by himself or deputy, whenever a successor is about to be installed as headman of the other branch.

(iv.) *Commendation.* When a person is anxious to enter another man's family, so that he may share in the protection and privileges which the members thereof enjoy, he goes before the head of that family, and formally transfers himself and all his worldly possessions into the safe keeping of his new protector. Such is the ordinary commendation. This must not be confounded with that voluntary fellowship of a person in the retinue of some influential neighbour, or with that species of service whereby a man with his family, in town or village, voluntarily accepts a sum of money from an influential king or chief, in order to be counted among his subjects. The head of a family and the whole family can (and in

days gone by did so) commend themselves to rich, powerful, or influential neighbours.

In former times, where, through straitened circumstances at home, or through a crushing family debt or calamity, a member of the family was sold or pawned, he ceased to be a member of his family; but whenever he was reclaimed, he regained all his rights, privileges, and position in the family. But when a person through misconduct was expelled from the family,[1] or was sold and got rid of by the family after due deliberation, he ceased to be a member of the family, even if his master gave him his freedom.

The members of the family are termed Ebusuafu. The normal condition of a Fanti family being joint, the law throws the burden of proving that a person has ceased to be joint, or that a person has ceased to be a member thereof, on the person asserting it. There is no limit to the number of persons of whom a family may consist, or to the remoteness of their descent from the common stock, and consequently to the distance of their relationship from each other. But the Fanti coparcenary, properly so called, constitutes a much larger body. When we speak of a joint family as constituting a coparcenary, we refer, not to the entire number of persons who can trace descent from a common female person, and among whom no cutting of the ekar has ever taken place; we include only those persons who, by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, and to burden it with their debts. Outside this body there is a fringe of persons who possess inferior rights, such as that of residence in the case of children, of maintenance in the case of domestics, or who may under certain contingencies hope to enter into the coparcenary.

The ordinary incidents of a family are —

(i.) Common clan;
(ii.) A common penin;
(iii.) Common liability to pay debts;
(iv.) Common funeral rites;
(v.) Common residence;
(vi.) Common burial-place.

[1] Dorx, Governor of the Dutch possessions, in an official communication to Geo. Maclean, the Judicial Assessor, on November 30, 1846, writes: "The 9 ackies alluded to as subsequently borrowed from *Effoom* by the father of the above-mentioned boy, *Quashie Kin*, which person, through making of much debts, was publicly abandoned by the family, and according to the black laws the debts are thereby null and void" as against the family of the debtor.

In the native courts, and with the experienced Judges of the Supreme Court, these several incidents are most carefully looked into in deciding contending claims, and for any light which may be thrown upon the matter, the opinion of the neighbourhood, and the statements of domestics and friends and servants, are received in evidence. *Amonoo* v. *Ampĭma*.[1]

(i.) Common clan: members of the family belong to the same clan, and to this rule there is no exception whatever. The slave becomes a member of his master's clan. The children of a free-born woman belong to their mother's clan and not to that of the father: *e.g.* a man of the Nsonna clan whose father is an Annona clansman is not at all entitled to any Annona property, for he is not a member of his father's family. Nor can a man be a member of two clans.

(ii.) A common penin (elder), also called Egya, father.

The senior or other male member of a family who has control of the family, and is its representative, is called the penin, or egya. Such person must of necessity be a member of the same clan; he may be a freeborn person of the heritable class (Dihi) known as the head of the family, managing and directing its affairs; or he may be the person who first brought wealth into the family; or increased its importance by buying slaves or receiving several persons by way of commendation; or who, by some act or deed, had increased the family possessions. The penin has control over all the members of the family and the issue of such members. Where the founder of the family is deceased, then the senior male member in the line of descent is, in the absence of any direction to the contrary, the penin. As such, he is the natural guardian of every member within the family. He alone can sue and be sued,[2] as the representative of the family, respecting claims on the family possessions, and he is as much the guardian and representative for all purposes of property as the Roman father — Paterfamilias.

The members of the family are bound to obey the lawful commands of the penin; he arranges the rooms in the family residence to be allotted to each,[3] and what portions of the family lands each is to cultivate or possess. Rooms and lands so allotted continue in the possession of such persons and their successors until the penin rearranges them.

When a member takes upon himself to take possession of the

[1] 1 Fanti Law Reports 214.
[2] *Mensa* v. *Krakue*, 2 F. L. R. 86; *Asraidu* v. *Dadzie*, 1 F. L. R. 174.
[3] *Barnes* v. *Mayan*, 1 F. L. R. 180; *Halmond* v. *Daniel*, 1 F. L. R. 182.

family property or a part thereof without the permission of the penin, he can be removed at any time, and another person placed in his stead. So also, a member of the family making any additions to the family residence or property cannot have an exclusive right thereto as against the family, unless at the time of making the addition the penin reserved to him the exclusive or special enjoyment of the addition or improvement.

The penin is usually one whose fitness had been recommended by the immediate predecessor, and who had been confirmed in his position by all, or by the majority of, the principal members of the family.

The principal members of the family have the right to pass over any person so recommended, and to elect another member of the family instead. Where the penin suffers from mental incapacity, or enters upon a course of conduct which, unchecked, may end in the ruin of the family, or persistently disregards the interests of the family, he can be removed without notice by a majority of the other members of the family, and a new person substituted for him.

In the absence of the penin, the eldest male member of the family acts as penin, for the long absence or incapacity of the penin must not prejudice the interests of the family.

Like other members of the family, the penin has but a life interest in the immoveable property of the family.

(iii.) *Common liability to pay debts.* Not only does the Customary Law render the person or persons who defray the burial expenses of any person *primâ facie* liable and responsible for the debts of the deceased, but, as Bosman states, the members of a family and the head thereof are jointly and severally responsible for any family liability. If a member of a family contract debt which benefits the family, or commit a wrong for which he is liable to pay damages or give satisfaction, the other members of his family are bound to pay, or such member must be given up by the family to the person making the claim. If the family do not wish to be held responsible for the future acts of a certain member, there must be a public notice of their decision to that effect, and such person must be expelled from the family, thereby severing his connection with them. A person is liable for the debts and the consequences of the torts of his slaves and the members of his family under his control. While a husband is living with his wife, or is providing for and maintaining her, he is not liable for her contracts, debts, or liabilities, except for any medical ex-

penses she may be put to for herself or child by him. For the wife, if freeborn or domestic of a different family, can acquire and hold property apart from the husband, and has her own family to fall back on. If the wife be a domestic and member of the same family as the husband, their common master's liability for them remains.

Children are liable for the debts of their mother.[1]

Not only is a father liable to maintain his child, but if he fail to obtain a wife for his son on reaching the age of puberty, he is liable for damages arising from the son's misconduct with any woman. On this point the Commissioners appointed by the Governor of the Gold Coast Colony in August, 1894, to inquire into various matters relating to Native Courts, suggest in their report that the question whether a father is liable for his sons' debts or wrongful acts, and whether the family or the head of the family is liable for one of its members, and whether a host is liable for his guest, should be left to be decided in each case when it arises by evidence as to the custom of the particular district.[2]

(iv.) *Common funeral rites.* On the decease of a member, all persons who are members of the family take part in making the funeral custom and contribute in defraying its expenses, for which they are primarily liable. The members of the clan also take part in observing the funeral custom, and contribute collectively towards the payment of the same, but they are not liable at all. It is usual for the local senior member of the clan, with the head of the family of the deceased, to preside over the funeral custom, to receive the expressions of condolence from sympathizing neighbours, and to accept funeral donations. "It is customary for friends and acquaintances to bring presents to the relations of the deceased, to assist them in performing the funeral ceremonies in a becoming manner." (Cruickshank, vol. ii. 217.) Funeral donations are of two kinds, to wit: (*a*) *Insawa*, which are not repaid at all, being considered as gifts to the deceased; (*b*) *Esi-adzi*, which may be more correctly called funeral custom advances. Respecting *esi-adzi*, Cruickshank writes: "Considerable sums are received in presents at the time of the funeral. They are seldom a source of gain, as it is expected that the receiver will make similar presents to the donor upon the occasion of death in his family." On entering into the accounts of the funeral custom expenses, *esi-adzi*

[1] *Quacoom* v. *Ansa*, 2 F. L. R. 1.

[2] "Gold Coast Government Gazette," January 31, 1895, p. 34, reproduced in 2 F. L. R. 182.

sums are set aside, and if the *Insawa* presents are found insufficient to defray the expenses, the immediate relatives of the deceased contribute for this purpose. Any sums received from the children or grandchildren of the deceased, or from his widows, are in the nature of *Insawa;* the liability to pay such sums by no means makes them members of his family, where such widow or widows are of a different family, since they are not entitled to be present when such accounts are being gone into, nor can they be compelled to contribute towards the liquidation of any deficiency.

(v.) *Common residence.* Persons who have a right to reside in the family house, or the right to dwell on the family possessions unconditionally, are members of the same family. "It was customary to regard the possession of a house as a common family fund in all the members of the family; while they remained such, each had a share at the same time that the head or representative of the family had the direction and disposed of it." (Cruickshank, vol. i. 316.)

(vi.) *Common burial-place.* It is customary for the family to have a common burial-place, which may be either in the family dwelling-house, or a grove or a plot of land set apart for burial. Children by a woman, freeborn or of a different family, can only be buried in the family burial-place of the father, by special leave of the head of the family. The members of a family have a right to burial in such burial-place, and it is here that libations are made on the special *Adai* seasons, or during the time of *Ahuba kuma.*

(*b*) MARRIAGE

The customary law relating to marriage is very simple, but, by some inexplicable process, it is a stumbling-block to the foreigner, and to the native who considers himself better than his forefathers. The attention of those whose sole object on the Gold Coast is to discredit the Fanti marriage institution is respectfully directed to an accurate study of the English marriage system.[1] From the English law point of view, a man's family is that of his father, and pedigree is generally traced in the male line.

The converse is the case with the inhabitants of the Gold Coast, Asanti, and other neighbouring places. In the early days of the

[1] "Wooings and Weddings in Many Lands." By *Annie Hyatt-Woolf.* Many of our own wedding customs are survivals of the days when marriage laws were of the laxest description, and it was the vogue for the would-be husband to seize and carry off by force the lady of his fancy. But later times, better manners.

missionaries on the Gold Coast, a practice or usage arose amongst the converts of recognizing the English law, while native custom was retained. The wife, by matrimony, took the name of her husband, and at his death, his children and widow took a half of his moveable property, while his own family took the other half. This practice cannot be said to be unreasonable or against the principles of justice, equity, and good conscience.

Marriage is the union of a man to a woman to live as husband and wife for life. It is sometimes preceded by betrothals, which often take place long before a girl arrives at a marriageable age. This is done when a person desires to be connected with the family of a friend, or desires his child or relative to be so connected with a desirable family. The acceptance of any money or token, called *consawment* money or token, and a piece of cloth for this specific purpose, destines the girl to be the wife of the person for whom the alliance is sought. This betrothal is perfectly binding on the family of the girl, who is regarded as the wife of the person betrothing her. He narrowly watches her conduct, and frequently demands and receives compensation for any liberties she may allow other men to take with her.

According to the law of the country, every person is the member of some family, and all the other members of that family are answerable for him. In theory, the stranger belongs to the family of the person with whom he lodges, to whom he came, or who is his landlord. A father is entitled to all the earnings of his son before his marriage. It is the duty of the father to engage a wife for his son as soon after he reaches the age of puberty as possible; and he is generally liable in damgaes, if his unmarried son, living with him, commits adultery with another's wife or any woman. This customary law is an old one, and is referred to by Artus in 1625. According to him: "Marriage being the foundation of Society, they keep their daughters in cloisters, when they are marriageable, and their sons leave themselves to their disposal, never wooing or looking on their wives before they marry them; giving nothing with their sons but what they earn themselves. Only the father gives a peto and a half of gold, and the mother half a peto, *i.e.* half an ounce, and the richest no more." In very many parts of the Gold Coast, that is in the inland districts, this custom still exists, but where European influence has had its way, he thinks twice who desires to take a wife, what with sundry initial fees of eighteen shillings and upwards, besides other heavy expenses.

If the father be dead, his successor is entitled to the aforesaid

earnings, and he is bound to provide the wife when the occasion arises.

He who desires a woman, whether maiden or widow, in marriage, must apply to her family, or person or persons, *in loco parentis*, for consent, and without such application and consent there can be no betrothal. Nor is there any remedy for breach of promise of marriage. If a man fail to marry a woman for whose hand he had applied, or if such woman refuse to marry him, or her family withdraw their consent, no action arises, and no damages are incurred by the person in default, who, however, forfeits any *consawment* or anything given to the other.[1] For instance, a man after giving *consawment* to the family of his intended wife, and money, trinkets, and other valuable presents to herself, cannot have any of them back should he improperly break off the engagement. But, if the breach is caused by the woman or her family, they are bound to return him the *consawment* and every present to herself and family, even though he may have received presents from them; the only exception is, in the case of funeral custom donations, as to which accounts are entered into and the balance struck off.

In order to be valid, a marriage must not be in violation of any rule as to tribal relationship, in some districts, or consanguinity. A man may not marry his uterine sister, his father's sister, or mother's sister, or brother's daughter, or mother's sister's daughter. A man can marry his father's sister's child. The union, however, is not encouraged. An adopted son or daughter falls within the same rules both in his adoptive and natural families, and the same rule applies to their issue. In some districts, a marriage between freeborn persons of the same clan is very much discouraged, but is not improper between a freeborn and a domestic, or between two domestics. To the question of the judicial assessor in *Penin* v. *Duncan*,[2] about the essential acts or ceremonies to constitute a valid marriage, according to the custom of the country, the chiefs replied: "When a man intends to have a certain woman for his wife, he applies to he family, asks her to be given in marriage by taking to the family according to his means, two flasks of rum, or two ackies of gold dust, or four or six ackies, according to his means. Upon this, if the family approve, they agree to give the woman. This request and consent with the first present alone make a valid marriage." The term "head rum," so often used in the case of marriage, is an instance of erroneous and deplorable interpretation of Fanti into English. Rum was unknown to the

[1] *Neizer* v. *Dontoh*, 1 F. L. R. 129. [2] 1 F. L. R. 118.

people until brought to them by those engaged in the slave trade, and before then, surely, marriage was not an unknown institution. The beverages made from maize, and extracted from the date and palm trees, were common, but instead of nuptial wine, an ignorant clerk said "head rum" for *Etsir ensa*. The term *Etsir ensa* is evidently a contraction of *Etsir nsa-nkredzi*, literally, tokens or price of the head; for in all primitive societies the idea of purchasing a wife underlies the institution of marriage, but rum, the curse of West Africa, is not essential at all in contracting marriage. Cruickshank, writing on marriage, says in his second volume, "native contracts of marriage are made by the payment of a certain sum to the relations of the bride. This sum varies according to the rank of the individual from 2 ounces gold = £8, to 4½ ackies = 22*s*. 6*d*., but it is more frequently paid in goods than in gold." Gold or goods so given, for the hand of a woman in marriage, were called *Etsir nsa-nkredzi*, rendered, in the records of the old judicial assessors, *consawment money*. This word is also mentioned by Bowdich in his work on Asanti; and when one bears in mind that some of the *Etsir nsa-nkredzi* are distributed among the relatives and more immediate friends of the woman, as proof of the honourable alliance, the absurdity of "head rum" becomes manifest.

After the *consawment* is accepted, follows the matter of dowry. "That depends on the family. If they tell the man that they require dowry to be paid, they state the amount they wish, sometimes one ounce, or nine ackies." If the woman's family do not wish for dowry, the man is not bound to pay anything. Among the poorer classes, the man and woman live together without any dowry having been paid at all, and yet such marriage is perfectly legal, and the husband can sue any one for satisfaction, that is, damages, for misconduct with the wife.

If a man seduce an unmarried woman, he is liable to pay to her family damages for the wrong so done her and the disgrace brought on her family. When such seduction was under promise of marriage, the liability to damages is not extinguished by any *consawment* subsequently given by the seducer to her family, who can at any time hold it as satisfaction of the claim for damages for the wrong done their child. Where a married woman is seduced, her seducer is bound to pay to the husband as damages a fine or penalty called Brabbu, which is for the pacification of the injured husband, and is not less than the value of the *consawment* dowry and all the marriage expenses. If the marriage is continued, only pacification fine can be claimed, the amount of which is fixed according to the social

standing of the injured husband, guided by the general character of the seduced woman. Moreover, where the conduct of the wife was brought about more or less by the husband's treatment, the seducer is liable to a nominal fine.[1] And if, on account of such seduction, the former marriage is dissolved, and he marries the woman, he cannot at any time recover from her family what he had so paid, even if the woman, without any cause whatever, refuse to live with him then or afterwards. Nor can he recover compensation from any one who may take this woman away from him, for, unless a man has given *consawment*, he cannot recover against anybody for seduction of a person who is nothing more than his mistress.

Where the consent of a woman's family cannot be gained, either because they improperly refuse to give such consent, or because they reside in such a distant place that it is impossible to obtain such consent, a man and woman, who voluntarily agree to live as man and wife for life, can contract a valid marriage; provided that such agreement is expressly made in the presence of credible and respectable witnesses, or in the presence of the chief or headman of the place, followed by the man and woman living as husband and wife.

When there has been a marriage in fact, the validity thereof is presumed, and where the caprice, avarice, or ambition of a parent has not been excited to force on a marriage, it will be found by careful study of the people and examination of the local marriage institution, that marriage entirely rests on the voluntary consent of a man and a woman to live together as man and wife; which intention, desire, consent, or agreement, is further evidenced by their living together as husband and wife. All other ceremonies and expenses attending marriage are superfluous, but are useful and taken account of in assessing damages in case of criminal conversation. Briefly stated, therefore, when a man desires to marry a woman, he goes personally or sends some one to her parents or family for her hand. If his proposal is agreeable to the family, and he receives their consent, the *consawment* money or token, valuing as much as he can afford, is sent to them. That is all that is necessary to constitute the marriage tie. The man may, according to his means, send to his bride some dresses, so that she may come to him properly attired. In marriages where one finds such expensive ceremonies, it is a notorious fact, there is no unity of interest, for the domestic arrangement is such that the wife

[1] *Penin* v. *Duncan*, 1 F. L. R. 118. See judgment by Chalmers.

rarely resides in the same house with her husband, but only carries his food to him daily and ministers to his desires.

On the death of the husband, his widows, him surviving, and their children by him, are entitled to reside in any house built by him, and the children and their issue have a life interest in such house, subject to good behaviour.[1]

When there has been a betrothal, a man can claim his wife on her reaching the age of puberty, and he is bound to support and maintain her from the day of betrothal. A man is bound to maintain his wife, and it is her duty to obey his request to live with him, and to perform all his lawful orders. A man can contract other marriages. By courtesy, the first wife should be informed of the proposed alliance; but the omission to do so is no cause for divorce or termination of the marriage by the first wife. A woman living in concubinage cannot sue the man with whom she is so living for any maintenance, nor can her family or parents sue the man for any satisfaction or maintenance. Whatever is given or entrusted by a man or woman to the person with whom he or she is living in concubinage, cannot be reclaimed on any consideration whatsoever. This custom of forfeiture is called *sarwie*. At first sight, this custom may seem repugnant, but the grounds for it are not unreasonable. Although men of substance and the influential classes will deny, or question, the existence of the custom or usage known as *sarwie*, or at least endeavour to limit its effect on account of its restraining influence on concubinal and illicit intercourse, this salutary custom or usage undoubtedly exists, and is well known to the female community (*Quassua* v. *Ward*).[2] In former times, this particular custom placed a great check or restraint on the wealthy, and those traders, European and native, who were in the habit of keeping a host of women under their protection as concubines, euphemistically called *friends*. Knowing perfectly well that the Customary Law compels no man to maintain his mistress, these "friends" had no claim for support or maintenance on their so-called protectors. But if such a woman has a child by her protector, he is bound to look after her during her illness only, and to pay any expenses attending her confinement. The sole or principal object of keeping these women, for whom no *consawment* had been given, and who had neither the status nor rights of a wife, was for their services. The protector

[1] *Barnes* v. *Mayan*, 1 F. L. R. 180; *Amamoo* v. *Clement*, 1 F. L. R. 180; *Swapim* v. *Ackuwa*, 1 F. L. R. 191.
[2] 1 F. L. R. 117.

lives on their services. A man having such a woman usually employed her without any pay or remuneration in selling goods, which he constantly, or at times, supplied her. Now and again the man may give to the woman money or clothing, with the object of inducing her to continue her services, and, with fair words, a woman is ever a prey to a designing man. The protector invariably manages to make the woman indebted to him, and whenever he fears she will transfer her affection to another in honourable marriage or otherwise, he endeavours to dissuade her by frightening her with false unfounded claims. A woman living with a man as concubine, mistress, or friend, is not encouraged in the eyes of the Customary Law, which stamps the relationship as immoral, to be remedied as quickly as possible. But women are frail, though the desire to have issue is keen in them, and men are deceivers ever. If a man therefore will not be properly and honourably married to a woman, but will for his own purposes keep her and live upon her labour, she is at liberty to terminate the immoral relation at any time she pleases, and she shall not be liable to return to him anything whatsoever he may have given or entrusted to her for safe keeping, sale, or any purpose whatsoever. Where a person living with a woman as his concubine wishes to marry her, he is bound to pay to the family of the woman satisfaction money, which can be waived, before giving the *consawment*, and if in consideration of the marriage the family of the woman or she herself be willing to return to the man whatever he may have given her or entrusted her with, the amount thereof is ascertained by the man and woman going into detailed accounts, immediately before the *consawment* is given and accepted. Such a marriage legitimizes the children of the man already born by the woman. The issue of an adulterous connection is illegitimate, and cannot be made legitimate by the subsequent divorce of the woman and her marriage with her paramour; *e.g.* Amba, wife of Kwamina, during his absence at Akassa, bears a son, the issue of an adulterous intercourse with Kwesi. Such son is illegitimate, and cannot have any interest whatsoever in the house of his putative father, even if, on being divorced by Kwamina or on his death, Amba is married by Kwesi.

Although a man may lawfully marry several wives, a woman cannot at the same time have more than one husband. Adultery is a ground for divorce, and a wife's adultery justifies her husband in expelling her from his house and refusing her any maintenance. Notwithstanding the vague ideas in the coast towns about divorce

of native marriage, there is no doubt that, save and except the competency of a native tribunal to decree the dissolution of a marriage, the right of divorce is marital only. The wife cannot declare her marriage void, nor can her family give her permission to remarry in the absence of the consent of her husband, signified by his releasing her from her conjugal obligation, either by chalking her, or saying so in the presence of competent witnesses. For adultery or witchcraft on the part of the wife, a man can divorce his wife and claim from her family the *consawment* and other expenses. But the wife cannot enforce divorce or discontinue marriage on the ground of her husband's adultery, or on his marrying more wives.

Change of religion is no ground for divorce; therefore, if a married woman embrace Christianity and thereupon deserts her husband, she does not cease to be his wife, and whosoever weds her can be sued for damages. By the term "ground for divorce," is meant cause for which the husband could recover the *consawment* and all his expenses from the woman's family; or cause for which the wife and her family would not be compelled to return any portion of the *consawment* to the man. If a husband is impotent, or neglect his wife or grossly ill-treat her, or absent himself for a long period of time, so that she commits adultery, he can divorce her, but cannot recover the *consawment;* for a wife has a right to the protection of her husband, and Customary Law does not countenance negligence of marital obligations.

There is no law on the Gold Coast similar to the Indian Act XXI., of 1866, the Native Converts Marriage Dissolution Act, under which, if a married person deserts his wife or she her husband for six months or more, on the ground of change of religion, the Court can fix a year, on the expiration of which, if the defendant still refuses to continue the marriage, divorce is decreed. In our native tribunals a husband can bring an action against a man harbouring a wife, and against her family for her recovery. This form of action is well known in India, and there the British Courts constantly enforce decrees to recover possession of wives by their husbands.

A woman living with a man as concubine is always looked down upon, and is considered immoral, however wealthy she may be.

Where the marriage is discontinued through the fault of the husband, so found by arbitrators or a native tribunal on a complaint made again him, he cannot get the *consawment* or money or

any of his expenses, and the wife goes away with all the property she possessed at the time of marriage, and, in addition, she is entitled to claim from him whatever she or her family may have expended on him. When the marriage is at an end, the wife can demand from the man a return of all monies and goods of her own in his possession.[1] If, on the other hand, it was through the fault of the wife or her family, the *consawment*, and his trinkets and clothing, not worn out in the service of the wife to her husband, are returned. Monies expended by the husband for the maintenance of his wife are not recoverable. An account of loans advanced to each other, as well as of funeral donations, is gone into and a balance struck, on paying which the woman is free to contract another marriage.[2] On the death of the husband the wife is bound to contribute towards the funeral expenses. Children bear the cost of the coffin and burial clothes of their father, but are not liable for the expenses of the funeral custom. They have the right to live in their father's residence or rooms, provided they are of good behaviour.[3]

A regrettable departure from the Customary Law relating to the recovery of the *consawment* on the determination of the marriage is becoming somewhat frequent in proceedings before the District Commissioners. In many cases it is assumed that the mother-in-law is always liable, whereas the person *prima facie* liable is the head of the family, or person who acted as such when the *consawment* was paid. When a woman deserts her husband the family is liable for all the property supplied by the husband then in her possession.[4]

A child receives its name from its father or the head of the father's family, eight days after its birth, and every child bears as its first name the day of the week on which it is born. Be it noted that Saturday (Miminda) is the first day of the week, and is considered as God's day. The natal day names are —

[1] *Fatimer* v. *Wellington*, March 5, 1872, "Cape Coast Court Record."

[2] *Karaba* v. *Quansima*, May 17, 1871, "Cape Coast Court Record," p. 348. In answer to the Judicial Assessor, the Chiefs state that "it is a rule when a woman refuses to continue marriage her husband recovers his expenses. If she leaves from her husband's misconduct and she makes palaver, and gains her case, the husband would lose his claim for expenses." And judgment accordingly.

[3] *Barnes* v. *Mayan*, 1 F. L. R. 180; *Swapim* v. *Ackuwa*, 1 F. L. R. 191; *Amamoo* v. *Clement*, 1 F. L. R. 180.

[4] *Sackie* v. *Agawa*, 1 F. L. R. 126.

	Male	Female
Saturday	Kwamina, Kwamin	Amba.
Sunday	Akwesi, Kwesi	Essi, Akosua.
Monday	Kudwo	Adwua.
Tuesday	Akobina, Kobina	Araba, Abina.
Wednesday	Kweka	Ekua.
Thursday	Ekuow, Kuow, Yow	Abba, Yā, Yawa.
Friday	Kofi	Effua.

According to the order of the birth a child may receive an additional name; the third male child is called Mensa, female child Mansa. Children of a woman bearing the same natal name, being twins or otherwise, are distinguished by the words Penin (elder), and Kakraba or Kakra (younger). Some natal names have certain endearing synonyms or complimentary salutations attached to them: *e.g.* Adwua as Adai; to Kobina the salutation is "Ebo Kobina ye bremba" ("thou art a brave man, Ebo Kobina"); he replies, "M'afe na wosi" ("so say my comrades"); to a Mensa's salutation, "Abur ampa" ("ingratitude still lurks"), the reply is, "Wo oyimpa tsirim" ("in the head of man"); meaning, no doubt, one does not easily forget ungrateful conduct.

"What is most commendable among the negroes is that we find no poor amongst them who beg: for though they are never so wretchedly poor, they never beg. The reason of which is, that when a negro finds he cannot subsist, he binds himself for a certain sum of money, or his friends do it for him; and the master to whom he hath obliged himself, keeps him in all necessaries, setting him a sort of task which is not in the least slavish, being chiefly to defend his master on occasion, and in sowing time to work as much as he himself pleases." (Bosman's Letter ix. p. 140.)

"Married people here have no community of goods; but each hath his or her particular property. The man and his wives generally adjust the matter together, so that they are to bear the charge of housekeeping, while the clothing of the whole family is at his sole expense.

"On the death of either the man or the wife, the respective relations come and immediately sweep away all, not leaving the widow or widower the least part thereof, though they are equally

obliged to help to pay the funeral charges. Some negroes, besides wives, have also their concubines, which they several times prefer before their wives, and take more care of them; but their children are esteemed illegitimate, and not reckoned amongst the relations.

"If a negro has a child by his slave, whether married to her or not, his heir will look after it and keep it only as a slave, on which account those who love their slaves will take care to make their children free, with the usual ceremonies, before they die, after which they are in every particular treated as free persons.

* * * * * * *

"I have already told you how many wives the negroes marry; and herein they place the greatest glory and grandeur, as their riches consist in the multitude of slaves, though they frequently conduce to their ruin, because every man is obliged to make good the injury which his slave does; if he is guilty of theft or adultery his master is obliged to pay the fine imposed for his crime. The negroes are also responsible for their sons, nephews, and other relations, though in this case the relations help each other by a mutual contribution, each giving something towards it according to his circumstances; which if he should not do, the criminal would be condemned to death or slavery." (Bosman's Letter xii. p. 202.)

II. PROPERTY

Things are divided into moveables and immoveables.

These two kinds are sub-divided into —

(1) Ancestral, including stool property.

(2) Family.

(3) Self-acquired or Private.

Moveables: *e.g.* sandals, cloth, a gold ring.

Immoveables: a house, land.

Moveable ancestral: a gold ring left by an ancestor or ancestress.

Moveable family: a gold ring purchased by general contribution of the members of a family.

Self-acquired: a gold ring purchased by a man with his own earnings.

Immoveable ancestral: a house or land which has descended from an ancestor or some relative.

Immoveable family: a house built or acquired by members of a family.

Self-acquired or private: a house or land purchased or gained by a person by his individual effort or exertion.

There are certain kinds of immoveable things which, either from their nature (as a fetish grove, public river or lake) or by reason of the uses to which they are put (as a burial grove), cannot be sold.

The acquisition of property is either original or derivative.

Original acquisition may be by —

(1) Appropriation of what has no owner, or of property whose owner has plainly expressed his intention of giving up and has, in fact, given up his ownership by leaving possession.

(2) Conquest or capture in war.

(3) Accession by means of the increase or development of a thing in one's possession: *e.g.* crops and fruits from one's land; rent of property; trees planted on one's land by any person whatsoever without the owner's permission; lands gained from the sea or river, either by alluvion from the washing-up of mud, sand, or earth, or by the water gradually or imperceptibly receding.

An inundation effects no change of property in land.

Where treasure-trove is found on some one's land, the owner of the land is entitled to a moiety of such treasure, and the chief or headman of the district to the other moiety. If such treasure was there hidden by the owner of the land, the finder is bound to restore it to its owner without any deduction whatsoever.

If a hunter or any person kill game on another man's land, the owner of the land is entitled to the shoulder or a quarter of such game.

Derivative acquisition may be by —

(1) Transfer, as in gifts.

To complete a transfer, it is necessary that —

(*a*) The transfer be by the owner of the thing transferred, or by one duly authorized by him. Where the thing transferred is ancestral or family property, the transferor must act with the concurrence and full approval of the senior members of the family having an interest in the property.

(*b*) The transferee must be placed in possession of the thing.

(*c*) The nature of the estate, title, or interest therein transferred must be distinctly stated.

(*d*) The transferee must show his acceptance of such estate, title, or interest in the thing.

(*e*) The subject of transfer must be capable of ownership.

(*f*) There must be witnesses of the transaction.

(2) Contract: *e.g.* sale, mortgage, lease, or loan.

(3) Succession of another's property.

(4) Partition: on the division of ancestral, family or other property held or enjoyed in common.

Ancestral property is —

(i.) Any moveable or immoveable thing which has descended to a person from an ancestor or ancestress however remote.

All savings made out of such moveable or immoveable thing, and all purchases or profits made from the income or from the proceeds on the sale thereof, follow the character of ancestral property.

(ii.) Property acquired on partition of, or in exchange for, ancestral property (*Mary Barnes* v. *John Mayan*, June 24, 1871). *Per* Chalmers: —

"The ground on which Mrs. Barnes bases her right is that the subject in question was given by Mr. De Graft to her mother, who was one of his wives, and was occupied by her as a dwelling-place. It appears that Mr. De Graft's family house stood formerly near the Castle; that it was removed as well as other houses by order of the Government, at a time when that part of the town was opened up, and that the tenement now in dispute was assigned by the Government to Mr. De Graft, in lieu of the one from which he had been dispossessed. He received also a money compensation for the building which it may be presumed he laid out in the construction of his new house. These things being so, I consider that the new tenement took all the incidents of the one for which it was substituted, and was therefore, in De Graft's lifetime, in the same position as if it had been land of inheritance to which he had actually succeeded."

(iii.) All accretions of any ancestral property. A person, whether member of the family or otherwise in possession of stool, ancestral, or family property, wishing to improve or make an addition thereto, must apply to or inform the stool-holder or head of the family for his permission so to do, and if no objection is raised, he acquires a right to the prior enjoyment of the improvement or addition so made, which is not liable to be sold for a stool or family debt so long as other property is available, otherwise not; for it is not lawful for persons to ignore the stool-holder or the head of the family and deal with the property as if it were their own absolutely.

(iv.) Property earned by a person with or by means of an ancestral property or its accretions.

(v.) Property which, belonging to a branch of a family, has come into the possession of another branch of the family on the failure of a successor.

Family property is any moveable or immoveable thing —

(*a*) Acquired by the joint labour of two or more of the members of a family;

(*b*) Or by contributions from the members of a family.

Property is designated self-acquired or private, where it is acquired by a person —

(*a*) Through his own personal exertions, without any help or assistance from his ancestral or family property;

(*b*) By gift to himself personally;

(*c*) By superior skill in business or intellectual pursuits.

Whatever a person acquires with the aid of his sister or her children or his brothers is family property. If his children by a free woman (Dihi) help him to acquire any property, they have no interest therein, and in the absence of any help from his own family, property so acquired is self-acquired or private. Whatever a wife helps her husband to acquire is the sole property of the husband.

If any property lost by the ancestor or any of his successors be recovered by a member of the family out of his own private resources, it is no longer considered as ancestral or family property, but is private property; unless such property had been recovered by the use of any part or portion of the ancestral or family patrimony; or it was acquired for the purpose of its forming part of the ancestral possessions, and this was made known to the members of the family. With the exception of the coast towns, where there is much contact with European ideas, private property in its strict sense does not exist. The family group is of the pure patriarchal type. The head of the family owns the whole of the property, and all acquisitions made by the members of the family are made for him, and fall into the common stock. This custom obtains in all parts of this country.

When the ancestral or family property is owned by a family, whether whole or divided, of which the headman sits on a stool, then the property is known as stool property, and is attached to the stool. As the family increases in prosperity and influence, the stool-holder creates junior stools, subordinate to the head stool, and any property, attached to the junior stool on its creation or subsequently acquired or possessed by the junior stool-holder and the people of that stool, is also called stool property.

In the coast towns a member of a family may make separate or private acquisitions and dispose of them as he pleases in his lifetime, provided none of his family nor any part or portion of

his ancestral or family property contributed to the acquisition of such property. But any property of his that remains undisposed of at his death, descends to his successors as ancestral property.

As in India, even so in this country, the advance of civilization tends to break up the unity of the family.

Where the members of a family support themselves on the produce of a common land, the proceeds of their united labour must be necessarily small.

The family has a claim upon its constituent members for their assistance in the cultivation of the common land, or in the ordinary labours of the household; hence it is no matter of surprise to find the units breaking up, on the discovery of new industries requiring skill and producing great rewards, and giving scope to each individual unit for the exercise of his skill and ingenuity in the acquisition of wealth and private property.

In this country joint property is the rule, and must be presumed to exist in each individual case until the contrary is proved. If an individual holds property in severalty — that is, as sole owner and possessor — it will in the next generation relapse into a state of joint tenancy.

Absolute, unrestricted, exclusive ownership, enabling the owner to do anything he likes with his immoveable property, is the exception.

The father is restrained by his brother, the brother by his nephew and sister's children, and the woman by her own issue. If land be free to-day in the hands of its acquirer, it will to-morrow resume its fetters in the hands of his heirs. In the English law, individual property is the rule, but corporate property is the rule on the Gold Coast and among the Akan and Fanti tribes. A careful comparison and analysis of the several kinds of systems commonly known here, show that there are but three forms of corporate system of property, to wit, the village community, joint family, and patriarchal family.

The Village community is a corporate body, of which the members are families, or family groups, residing in the several households, and including the joint as well as patriarchal families.

These village communities are scattered over the length and breadth of the whole of Guinea. The headman of the village is in some places so by hereditary right, in other places he is so by election. But in places, where the right is hereditary, the members of such village community have a right of veto.

The Joint family is a corporate body whose members are persons

or individuals having a remote common ancestor, or who, though alien in blood, have become members of the same clan by commendation or otherwise.

Patriarchal family is defined by the great jurist Sir Henry Maine, to be a group of natural or adoptive descendants, held together by subjection to the eldest living ascendant uncle, father, or grandfather. Whatever be the formal prescriptions of the law, the head of such a group is always practically despotic; and he is the object of respect, if not always of affection, which is probably seated deeper than any positive institution.

In the more extensive assemblies of kinsmen which constitute the joint family, the eldest male of the eldest line is never the parent of all the members, and not necessarily the first in age among them. To many of them he is merely a distant relative, and he may possibly be an infant. The sense of patriarchal right does not die out in such groups. Each father or grandfather has more power than anybody else over his wife, children, and descendants; and there is always what may be called a belief that the blood of the collective brotherhood runs more truly and purely in some line than in any other. Among the Hindoos the eldest male of his line, if of full mental capacity, is generally placed at the head of the concerns of the joint family; but where the institution survives in any completeness, he is not a paterfamilias, nor is he owner of the family property, but merely manager of its affairs and administrator of its possessions.

If he is not deemed fit for his duties, a worthier kinsman is substituted for him by election, and, in fact, the longer the joint family holds together, the more election gains ground at the expense of birth ("Early History of Institutions," 117).

According to the Fanti laws, a father has in subjection under him his son and his son's children. Whatever is acquired is acquired for the father, and this state of subjection doth only terminate on the father's death. In a patriarchal family, one finds the father having power over his sons and daughters and grandchildren, his wife, servants, and other dependents. If on his death his sons separate, this will be the setting up of several subordinate families, over which each son will be the head, but under the head of their mother's family.

Under the system of village community, the land belonging to the village is so held, that all the inhabitants of the village have each of them a proportionate share in it as common property, without any possession of, or title to, distinct portions of it.

Each person is entitled to cultivate any portion of it, and during such cultivation he has an absolute right to his crops.

In the joint family all the holdings are enjoyed in severalty, and each member manages his portion of land.

The extent of such holding is equal to the land originally brought under cultivation, or transferred on the day of commendation, or is determined by long usage.

In the patriarchal family all the lands are under the control of the patriarch, who alone directs how they are to be cultivated. He is entitled to all the produce of the land, and nothing can be done with anything belonging to the family without his approval or confirmation.

There is a fourth kind of corporate system of property, which may be called the "clan property." Property of this nature was originally acquired by the local clansmen clearing the virgin forest and afterwards setting it aside for the use of the clan, usually in the possession of one of the principal clansmen, whose duty it is to look after it for the benefit of all the clansmen in that locality in particular, and for the fellow-clansmen in general. Hence one hears the expression, "The land (Asiasi) is the property of the Okonor clan." Plots of such lands are granted to members of the clan desirous of building thereon. The freehold is always in the senior clansman for the time being of the locality. By no length of uninterrupted enjoyment can any one acquire any title adverse to the title of the whole clan. It is very doubtful whether the clansmen have any power of sale over any part or portion whatsoever of such clan property. Analogous to such clan property are burial groves, or places set apart for the burial of the members of each clan.

III. TENURES

The ordinary tenures of land are freehold, and the derivative tenure of leaseholds.

An estate of freehold is an estate either of inheritance or for life in lands of free tenure.

An estate in lands and tenements may be considered —

(i.) In reference to the quantity of interest, that is, whether freehold or less than freehold; or

(ii.) With regard to the time of enjoyment, as to whether the interest is in possession or expectancy; or

(iii.) With regard to the number and connection of the tenants.

The term "freehold" denotes the tenure of the property, and shows that the owner thereof has a life estate at least.

An estate of inheritance is where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him *in perpetuum* in right of blood, according to an established order of descent.

With regard to the quantity or duration of interest, there are estates more or less similar to English estates of (i.) fee-simple, (ii.) for life, (iii.) for years.

An estate in fee-simple is the largest estate or interest which the English law allows any person to possess in landed property, and is that which a man has to him and his heirs. The holder of such property is called a tenant in fee-simple. Strictly speaking, the term "fee-simple," as used in English law, cannot be correctly applied or used when speaking of the highest kind of the tenures obtaining on the Gold Coast. Even in those parts, such as Wassaw Amenfi, where the king is the owner of all the lands in his district, the use of the term "fee-simple" is misleading. At the most the king or head chief is but a trustee, who is as much controlled in his enjoyment of the public lands by his subordinate chiefs and councillors as the head of a family by the senior members thereof. *Per* Chalmers, in *Barnes* v. *Attah*, July 17, 1871: "I apprehend that not even the regular occupant" (of an Egua) "could alienate property without some concurrence by the people of the stool (Agua) who have an interest in it, and are usually consulted on such a matter."

The king, by the law of England, is the supreme lord of the whole soil. Whoever, therefore, holds lands must hold them mediately or immediately of him; and while the subject enjoys the usufructory possession, the absolute and ultimate dominion remains in the king. (Co. Lit. 1a.)

As far as the Gold Coast is concerned, this portion of the English law does not apply, for it is a group of territories under native rulers taken under British protection; it is British territory, but not so by conquest or cession; as a matter of fact, the Colonial Office stated on the 11th day of March, 1887, as published in Parliamentary Blue Book of that year, that it is inaccurate to state that after the successful Asanti expedition of 1874, the Protectorate was annexed by Great Britain and became a colony, "inasmuch as the greater portion of the Gold Coast Colony still remains a Protectorate, the soil being in the hands

of the natives and under the jurisdiction of the native chiefs."

According to native ideas there is no land without owners. What is now a forest or unused land will, as years go on, come under cultivation by the subjects of the stool, or members of the village community, or other members of the family.

The granting of permission to others and outsiders to reside on or cultivate the lands of a family, a stool, or a village community, is a practice of the greatest antiquity, and was in times past more universal than sale of land, which is of comparatively modern growth. The chief or king of a tribe, or headman of a family, can, with the consent of the whole or major part of the sub-chiefs, and councillors, village elders forming a body of councillors or senior members of the family, as the case may be, allow strangers and foreigners to live on certain lands. In cases where the land is appurtenant to the stool of a king or head chief, the tenant becomes subjected to such stool, and he, with his people, is bound to perform such services, or pay such annual sums as may be declared to be performed or paid yearly. Plots of land in the actual and lawful possession of a subject of the stool, or a member of the village community, or a member of the family or company, cannot, unless with the express consent of the person in possession, be so granted. But where a person in possession of a portion of the public land abandons it, or his family have abandoned it for more than ten years at least, the village headman and elders can allow another person to occupy the same.

The making of grants to strangers, particularly to Europeans, of waste lands, that is, lands abandoned or never under cultivation by any one, and of minerals, and of concessions of forest land for a term of years, though said to be modern comparatively speaking, is not necessarily illegal, according to Customary Law. A person who desires to procure a grant of land or any concession from a local ruler, should make special inquiries, and inform himself who the members of his council are, and get them or the linguist of the council to join the head chief in making such grant. Where the concession is made by a subordinate chief, inquiries should be made to find out whether the concurrence of his paramount chief is necessary or no, for whatever lawful grant or permission is so given by a person *de facto* chief, with the concurrence of men *de facto* members of the village council or stool, is good and valid according to Customary Law, and the grantee by taking possession of the land and working thereon becomes a tenant of

the stool, village council, or family, as the case may be, and not of a specific individual. Among European communities the title of a landlord, or vendor, or grantor of property, is sought for by searching his muniments of title and making an abstract of his title-deeds; on the Gold Coast one has to make careful inquiries, which must be guided by the Customary Law. The occupant of the stool, or head of the village community or family, as trustee, has the right to enforce performance of the conditions under which the permission was given. If the tenant fails so to do, or denies the right of the person who, or whose predecessors, gave him title, or encourages some other person to contest such right or title, he can be sent away from the land.

Conveyance of land is invariably made in the presence of witnesses. The symbolic tokens and ceremonious performances, taken in addition to the words expressed before such witnesses, set forth the nature of the transaction, the quality of the estate granted or transferred, and the conditions, if any, of such grant.

There are certain well-established usages in the enjoyment of lands, one of which is the practice of allowing plots of land to lie fallow for a longer or lesser period of time.

It must be borne in mind that no person can acquire by long uninterrupted possession, an adverse title against the owner of property, through whom or whose ancestors possession was first acquired.

The simplest and most common kind of tenure is what may be called "sowing tenure." Here, the owner of a plot of land usually gives to a person, who has applied to him, leave to have the use of his land for one sowing season. In the absence of agreement, the owner of the land is entitled to take 500 heads of corn, or a small proportion, about one-tenth, of any other crops grown on such land.

If the tenant die before his crops are gathered, his heir or successor is entitled to reap them, and the owner of the land cannot appropriate such crops, without giving notice to the representatives of the deceased, to the effect that the crops must be removed before the end of the harvest season, or before the festival Ahuba Kessi. Having once sown his crops, the tenant cannot sow a second crop on any part of the grantor's land without his express permission, for as soon as the crops are gathered in the tenancy ceases.

Where, after notice, the tenant's crops are not removed, such crops become the property of the owner of the land.

There is also known what may be called an "annual tenure" running from year to year.

A person having once got the land has full right to cultivate it for any duration of time until the owner, by due notice, terminates the tenancy.

The rent usually reserved, in the absence of special or other agreement, is the help which the tenant is bound to render the landlord at the period or seasons of sowing and reaping, usually three days in the week.

Unlike the sowing tenure, the tenant has the right to build and reside on land so granted him. On his death, his heir or successor, after notifying the owner and after certain ceremonies, acquires the same rights and privileges until the landlord gives notice to terminate the tenancy, when the land goes back to the owner with all the improvements thereon. But the owner of the land is not entitled to such crops as are sown and reaped yearly, unless the tenant has failed to remove them after due notice. Where the owner of land gives to a person permission to cultivate a portion of his land, and this person and his heirs continue the cultivation of such land, for upwards of forty years, without paying any rent or giving any produce therefrom to the owner, such long possession does not destroy the title of the original owner and his representatives.

The original owner or his successor can at any time go upon and retake possession of the land as soon as the tenant asserts an adverse claim to it. In the absence of such adverse claim he cannot disturb the quiet enjoyment of the tenant, without prior notice to the tenant that he requires the land. Where, however, there are palm-trees on the land, whether planted by the owner of the land or by the tenant, the landowner has full right, at any time he pleases, to cut trees or gather any nuts therefrom. Custom does not permit any person to be improved out of his land, and palm-trees not only improve, but also enhance the value of, lands.

Where the nuts from a palm land are manufactured into oil, the owner of the land receives half of the oil, and the oil manufacturer the other half, and the expenses of preparing the oil is equally shared by them. If, instead of oil manufacture, there is extracted from the palm-trees palm-wine, then the owner of the palm-trees is entitled to one-fourth of the proceeds of such palm-wine, the person who fells the trees and prepares the wine is entitled to one-fourth of such proceeds, and the person who sells such palm-wine is entitled to half of such proceeds. According

to a well-known practice of the law courts, each palm-tree is valued at twenty shillings.

Abehem tenure arises where a person is placed on palm land, and the only stipulation is for a specified quantity of oil to be delivered to the owner each year, whether the tenant makes any oil or not during the year.

In the absence of agreement, an owner of land, from persons having the use of his land, is entitled to claim when corn is planted 500 heads.

Grants of land for building purposes are very frequently made in the form of perpetual leases, either for some valuable consideration, or by way of reward for past services, or on the ground of mere affection or friendship. Lands so granted are resumable by the grantor and his successors on failure of successors in the grantee's family.[1]

Land so granted is inalienable, except with the express consent and concurrence of the grantor, if it be his self-acquired property; but if ancestral or family property, then the consent of the persons entitled to the reversion, and who have an interest in it, and who are usually consulted before any alienation is made, must be gained.

The grantee of a building lease does not acquire any right in the soil.[2]

Grants of land for building purposes are generally made by members of a family to a junior member at the time of marriage. Thus a man takes in marriage a woman. The members of her family give or point out to the husband a plot of land to build on, and the only object of this is that the man may have somewhere to reside with his wife and any issue of the union.

The rule of the descent with regard to any erections on such lands is somewhat similar to what is known in English law as tenancy in tail special. The grant is invariably made to a man and his issue (not heirs) — say, on Essie, his wife begotten or to be begotten. Whatever is erected on such land goes to Essie and her children by him. For all practical purposes, the man has only a life interest, which he forfeits by wrongfully and improperly terminating the marriage.

The man's heir or successor has no title or interest in such premises, nor can he himself sell or mortgage them.

If the land was granted by the family of the man to him for building purposes, then neither his freeborn wife nor her issue has

[1] *Boun* v. *Steele*, 2 F. L. R. 77.
[2] *Lyall* v. *Dougan*, 2 F. L. R. 56.

title or claim to the ownership of such premises, but his children by her have only a right of residence in the father's house, *i.e.* a life interest subject to good conduct.[1]

Land so granted for building purposes reverts to the grantor and his family —

(*a*) On the grantee quitting possession;

(*b*) On the grantee denying the title of the grantor to the land by setting up his own title or the title of any other person;

(*c*) On the building erected thereon, or the greater part of such building, falling into ruins;[2]

(*d*) On the grantee leaving no issue by the woman on whose marriage with him or through whom the grant was originally made;

(*e*) By purchase of the building erected thereon.

The woman is, however, entitled to live in such buildings as may have been erected by the husband.

The right of the grantor is lost by —

(*a*) Gift or sale of the freehold to the grantee;

(*b*) Sale of the land by the grantor to any person;

(*c*) Death of the grantor without heirs or any successor.

If the grantee erects any building on land so granted, and he desires to sell such building, there being failure of issue by his wife then deceased, the grantor or his successor has an absolute right of having the first offer.

Where the grantee has issue by the wife, through whom he came into possession, he cannot sell premises erected on land so granted without the concurrence of his wife and his children by her.

If such premises be sold without the consent of the grantor or his successor and family, but only with the concurrence of wife and children, the purchaser acquires, at the most, only a life interest, and can only enjoy the property during the life of the grantee, his wife, and their children, for as soon as they all die, the grantor or his successor is entitled without any interruption to take back the land, without paying any compensation whatsoever for any improvements made or for any buildings thereon erected.

And not only is the grantor or his successor entitled to the first offer, but he is entitled to demand from the purchaser an acknowledgment, that the land is not the property of the person

[1] *Swapim* v. *Ackuwa*, 1 F. L. R. 191.
[2] *Awortchie* v. *Aidgun*, 2 F. L. R. 56.

who built the premises. This acknowledgment may be made by payment of money or by giving any token.

If the grantee or purchaser neglect or refuse to render the acknowledgment, or to pay any reserved rent, he must remove his buildings and quit the land. The creditors of the owner of the buildings can at any time pull down the buildings and remove the materials in satisfaction of their claim. Therefore, where the owner of land gives leave to a person to build, the maxim *quicquid plantatur solo, solo cedit*, doth not apply, and even if the materials were acquired from the land, and the occupier unsuccessfully contests the right of the owner, yet he can pull down the houses, when he is being turned out, or he is voluntarily leaving.[1]

It is a well-established custom that no one should be improved out of his land, and also that family and ancestral properties must not be alienated except for well-recognized reasons.

Where family or ancestral property has been alienated for value, the original owners, or those descended from them, can repurchase such property, provided the proper sacrifice is offered, the necessary libations are made, and the family or persons in possession are not residing on such property or using it. If a portion of the land has been set apart for a burial-place, that part need not be reconveyed to the family of the original owner at their request. The re-purchasing of such property is called Pũn, that is Redemption.[2] A family owning or in possession of other lands as freeholders in the same neighbourhood, cannot compel this kind of redemption, and a long period of time does not bar the right to such recovery of ancestral property. This kind of redemption must not be confounded with the redemption of mortgaged or pawned lands.

Owners of lands where gold and other minerals are found give permission to miners to work thereon. These men open mines and sink several shafts, and the customary rent is what is known as Ebusã, which is a division into three parts of whatever the mines produce, whether gold, or quartz, or other minerals. To the landlord belongs one-third. But whenever gold nuggets are found in such mines the landlord takes one-half.

The owner of land covered with timber is entitled, in the absence of express agreement, to one-third of all logs, beams, and other timber felled or gotten of his land. And generally the owner of land is entitled to one-third of all produce gotten of his

[1] *Wood* v. *Aisawa*, 2 F. L. R. 51. [2] Compare Leviticus xxv. 23–27.

land by his tenants; this one-third is given him in kind, or its value paid in money, as the owner shall direct.

In the Wassaw Amenfi district *Tikororo* custom prevailed, that is, King Enimil was entitled every Saturday during the mining season to be paid from each mining shaft a measure of quartz, and this was collected on each Saturday by the king's servants.

Grantees or their successors asserting title to a land adverse to the grantor, or disputing his title, forfeit their possession, and may be ejected at once from the land by the grantor or his successors.

IV. SURETYSHIP

Suretyship, *Eginam-dzi* or *Aba-su-dzi*, is a collateral engagement by a person to be responsible for the debt or performance of the obligation of another. The person who undertakes to be so responsible is called the surety, *Eginam-dzi nyinpa* or *Aba-su-dzi nyi*. To constitute valid suretyship, it is essential to have the mutual assent of all the parties, namely, the creditor, the person secured, usually called the principal debtor, and the surety. These three parties must be persons competent to contract, and they must do so with the necessary formalities and ceremonies.

However much a person may like to stand surety for a principal debtor, he cannot do so against his approval, whether such person is related to him or not. The creditor also must assent to the suretyship, and, until his acceptance, the offer to be so liable is revocable. Where the creditor and his debtor are subjects of the same stool, or members of the same village community, under the same headman, chief, or king, such king, chief, or headman cannot be a surety, and any engagement on his part to be responsible to a person so under him for another person under him is void. Likewise, the head of a family cannot be surety to a member of the family for another member of the family. But where the creditor belongs to a different family, even though of the same clan, the head of the family can become surety for a member of the family to the creditor. Insane persons and lunatics cannot be sureties. If a person, through intoxication or by duress, become a surety, he can avoid his responsibility by acting promptly, and calling upon the creditor to release him from his obligation, otherwise his acquiescence will bar his release. A married woman cannot without the consent of her husband become surety for any person whatsoever, save and excepting her parents and children. Except with its mother or other immediate blood relatives, an

infant can never become surety. The liability of a surety to answer for the debt of another, or for the consequences arising from failure of the performance of his principal's obligation, is a personal responsibility, and does not bind the surety's family or his successors. When a man becomes surety none of his children are bound by his contract, except such as joined in the contract with the consent of their mother or her family. Although there may be slight variations in some localities, there is always a promise made or oath taken by the principal debtor to the proposed surety, that on such and such a day he will hand to the surety the amount in question, or that before the expiration of the specified day the contract will be performed; *e.g.* A requiring 2 ackies goes to B, who agrees to give it him on his finding a surety. C consents to guarantee the amount. To complete this contract there must be witnesses, in whose presence B counts the money and places it in the hands of C, who passes it to A. Immediately before or after the receipt of the money, A has to promise C, or take oath in the presence of these witnesses, that he, A, will repay C the loan on the day fixed, so that he, C, may pay B. If A has sureties, whether members of his family or otherwise, each of them makes the same promise or takes an oath to the same effect. After this C also promises B, or takes oath, that, on the day specified, he will see A repay B the loan, or he, C, will make it good. Where C also has sureties, each of them promises B, and takes oath to the same effect, each promissor in his turn calls the witnesses to take note of what is going on. The witnesses are usually invited by the creditor, debtor, and surety respectively, and in their presence the considerations must be distinctly stated. After the creditor has consented to accept C as surety for A, a sum of money or chattel is given to the witnesses as token of the contract. If there are persons who "*stand behind*" the surety to ensure the due performance of his guarantee, they do not always expressly make any promise or take any oath, the surety C merely saying to the creditor, "these stand behind me," *i.e.* they are my sureties. Money or token given to the witnesses is added to the debt of the debtor.

In default of payment, the remedy of the creditor is against the surety in the first instance, and not against the debtor. It is only where the surety cannot be found, or he fails to pay, that the creditor can sue the debtor, for then it is certain that the debtor had failed to keep his solemn promise to the surety. It is the duty of the debtor to perform his solemn stipulation, and to see

that his surety does not fail in doing likewise, for the debtor should know more of his surety than the creditor. Where there are several sureties for one specific sum of money, they are jointly liable, and each cannot be made to pay more than a proportion of the debt. Where the creditor makes further arrangement with the debtor, unknown to the surety, or without his consent, or grants him more time, or instigates the debtor to run away or so deal with his property, that the surety's means of falling on it to recoup himself is lost, the surety is discharged. Where a creditor, by fraud, or misrepresentation, induces a man to become surety for a debtor, the contract is void. A person does not become a surety by merely interceding for a debtor. At the time of accepting the guarantee, the creditor is to give the surety some money, varying in amount from a takoo, or ninepence, to an ounce of gold (£3 12*s.*), to bind the contract of suretyship.

When the surety wishes to strengthen his claim on the debtor's relations, the debtor is usually joined by his brothers and nephews, the younger ones being preferred, as in the ordinary course of nature the younger ones may live longest. In order that the debtor may expeditiously fulfil his contract, it has long been customary for a child, relative, or servant of the debtor, to live with the surety, and in the event of the death of the debtor, the fact of such a person residing with the creditor, or surety, is a strong proof to the debtor's family of the existence of the debt.

This custom is quite distinct from pawning (*Ahaba*). A person placed in pawn is not personally liable for the debt, although in temporary bondage to the creditor, and as such he cannot acquire any property, which will belong to the creditor. The death of the pawn does not cancel the debt and he must be replaced. But in the case of *Eginam-dzi* (suretyship), the co-surety, *i.e.* the person "standing behind," is personally liable for the settlement, and while remaining with the creditor he can acquire property or earn means to liquidate the debt. The creditor may, though not bound, maintain him, and if he does maintain him he can add the expenses thereof to the debt, unless the co-surety gives his services in return.

The surety has a right to fall on the debtor to repay him all monies he may have paid to the creditor, together with any expenses and disbursements incident thereto. A surety is not entitled to the benefit of any set-off the principal debtor may have against the creditor, unless by express agreement.

V. ALIENATION

Alienation of property may be by (i.) gift, (ii.) mortgage or pledge, (iii.) loan, (iv.) sale, or (v.) testamentary disposition, and any property about to be alienated should be so described and defined that there can be no reasonable doubt as to its identity.

The head of a family has greater powers of alienation over moveable ancestral property than he has over immoveable ancestral and family property.

He can alienate the former in gifts to any of the members of the family, or for their education, support, or relief from distress, or for starting in trade or business, or for getting a wife for any member.

Whenever there is a stool or family debt, the stool or family property, whether moveable or immoveable, can be taken and sold to pay such debt. And where the members under the stool or of the family refuse or are unable to pay such lawful liability, the stool-holder or head of the family can, after due notice to the senior members of the stool or family, with or without their concurrence, mortgage or pledge any stool or family property.[1]

Amid all the conflict of contradictory accounts which meet one at every turn, it is nearer the mark to say, that the head of the family has the moveable ancestral property in his absolute control; if, therefore, the family find he is misappropriating, wasting, or squandering the ancestral fund, it is to their interest to remove him at once and appoint another in his stead.

The head of a family cannot, without the consent of all the principal members of the family, or the greater part thereof, that is the Ebusuafu, alienate the immoveable ancestral or family property.

And although an alienation may be necessary for some family purpose, or for the discharge of a family obligation, nevertheless, unless confirmed by the senior or principal members of the family, such alienation is revocable.

Neither the head of the family acting alone, nor the senior members of a family acting alone, can make any valid alienation nor give title to any family property whatsoever.

Any person buying or advancing money on any property should carefully inquire whether the property is ancestral, or family, or private. If he find from his inquiries that it is not of the last

[1] *Aidoasi* v. *Abban*, 2 F. L. R. 90.

description, he is bound to inquire into the necessity for the alienation, and find out whether all the beneficiaries are parties to the transaction; whether such alienation benefits the estate or family; and in cases where the property is in a stranger's possession, whether the senior members of the family have received notice of such transaction. *Pandy* v. *Koonwaree*, 6 Moore's Indian Appeals, 423: —

"The court will consider whether the debt for the discharge of which the alienation is alleged to have taken place, has been incurred owing to misfortune, an income inadequate for the ordinary expenditure of a person in the position of the person incurring the debt, or antecedent mismanagement of other managers; or, on the other hand, whether it is owing to profligacy and wanton waste of the estate on the part of the alienor; and if the latter state of facts be proved, the court will scrutinize rigidly to see if the person advancing the money was in any way a party to such profligacy or wanton waste, and if it be shown that he was so cognizant of or a party to it, the court will not deem the alienation to have been lawful." Thus decided their lordships of the Queen's Privy Council, and it is worthy of remark, that in the native tribunals the purchaser of ancestral family or stool property must have clean hands, if he is to retain possession of such property.

Where money has been advanced for the purpose of discharging an ancestral or a family debt, and the members of the family have parted with their ancestral or family property in satisfaction of such advance, such alienation is valid, if the alienee is able to show that he acted *bonâ fide;* that in truth and in fact, the money advanced was for the discharge of an ancestral or family debt; and that on ndependent inquiry he was satisfied it was an ancestral or family debt from which it was necessary to relieve them.

Whenever the alienation of any property is set aside, the alienee is entitled to get back his purchase-money from the person who received it, and where the person at whose instance the alienation was set aside has had some benefit from the purchase-money, he will be bound to refund the whole or lose his suit. *Awortchie* v. *Eshon*, March 7, 1871.

But where the alienee fails to prove facts which would justify a refund of the purchase-money, he loses his money.

If, however, part of the alienation is found to be justifiable and a part not, then the alienee will be entitled to the part upheld.

(*a*) GIFT

Gift consists in the relinquishment of one's own right and the creation of the right of another, in lands, goods, or chattels, which creation is only completed by the acceptance of the offer of the gift by that other.

It must be remembered, however, that gifts are oftener made of moveables such as goods and chattels, than of lands and other immoveables.[1]

To constitute a valid gift, an intention of giving or passing the property in the thing given to the donee by the donor, who has power so to do, is necessary.

The acceptance of such gift by the donee must be made in the lifetime of the donor.

The giving and acceptance must be proved and evidenced by such delivery or conveyance as the nature of the gift admits of.

What is given by a person in wrath or excess of joy, or through inadvertence, or during minority or madness, or under the influence of terror, or by one intoxicated, or extremely old, or afflicted with grief or excruciating pain, or what is given in sport, is void.

Where anything is given for a consideration unperformed, or to a bad man mistaken for a good one, or for any illegal act, the owner may take it back.

The acceptance of a gift may be made publicly or privately, having regard to the nature of the gift; but the acceptance of a gift, consisting of immoveable property, must be invariably made with as much publicity as possible. Acceptance is made —

(i.) By rendering thanks with a thank-offering or presents, alone or coupled with an utterance or expression of appropriating the gift; or

(ii.) Corporeal acceptance, as by touching; or

(iii.) Using or enjoying the gift; or

(iv.) Exercising rights of ownership over the gift.

In this country gifts invariably clothe themselves with the semblance of a sale, and therefore, where formal acceptance is wanting, the owner can take back his gift.

Gifts, in the European sense of the term, as far as regards immoveables, seem to be unknown here.

If the donee is in possession, either alone or jointly with the donor before the gift, the continuance of his possession is sufficient without any new delivery, provided the donee expresses his acceptance in the manner set forth in (i.) above.

[1] *Halm* v. *Hughes*, 1 F. L. R. 65; *Bimba* v. *Mansa*, 1 F. L. R. 137.

Every gift when completed is irrevocable, except in gifts between parent and child, which can be recalled or exchanged at any time by the parent in his or her lifetime, or by his will or dying declarations.

A gift is not rendered invalid —

(*a*) By being made in contemplation of death and subject to a conditional right of resumption in case of the donor's recovery ;[1]

(*b*) By being made dependent on a contingency; or

(*c*) Because the donee is a minor provided some one on his behalf makes the necessary acceptance; or

(*d*) Because it is voluntary.

Anything given in return for a gift, as a token of the acceptance, cannot be recalled so long as the original gift is in the possession of the original donee.

(*b*) MORTGAGE AND PLEDGE

A pledge is the delivery of a thing or chattel to a creditor as a security for money advanced or due, on condition of his restoring it to the owner after payment of the debt, and subject to a conditional power of sale if the loan or debt be not paid at a certain specified time.

The creditor is not bound to defend the title of the owner of such security.

A moveable thing or chattel given as security for a debt is a pledge.

An immoveable property given or conveyed by way of security for a debt is a mortgage.

The person giving an immoveable property as security is called the mortgagor; and the person to whom such property is given is called the mortgagee.

When the mortgagor discharges the liabilities for which an immoveable property is mortgaged, he is said to redeem the property.

When the mortgagee enforces any right given to him by his contract of putting an end to the mortgagor's right to redeem, whether by selling the property, and out of the proceeds of the sale satisfying the debt on the property, or by transferring the property to another person, or by becoming absolute owner of the mortgaged property, he is said to foreclose.

Where a person is the security given for the payment of any sum of money, the person is called a pawn, and the transaction,

[1] *Assandua* v. *Hayfron and others*, before Macleod, C.J., 1887, a case of *Donatio mortis causa*.

pawning; but since the Gold Coast Ordinance, No. 1, 1874, this has been declared illegal.

A mortgagee has no power to foreclose without first giving reasonable notice to the mortgagor, and in his absence, to the immediate relatives of the mortgagor, of his intention so to do.

Where real property has been mortgaged, the mortgagee is absolutely entitled to enjoy, without any hindrance whatsoever, all profits accruing therefrom, nor is he accountable for the profits so enjoyed.[1]

Where continuing interest is charged for the principal, the mortgagee may reimburse himself for any trouble or expenses he may have put himself to, for and on behalf of the mortgaged property.

A mortgagor can redeem at any time he please, provided he repays all monies due on the property, whether such monies be the principal debt or interest, or expenses incurred on behalf of the property.

No mortgagor or mortgagee, or their respective successors, can transfer to another any rights which he may have under the mortgage without notice to the other party to the mortgage transaction. The mortgagor may assign or transfer his right of redemption to a third person.

To make such an assignment or transfer of mortgage rights valid, it is necessary that some of the witnesses of the original transaction be present, if available, or the mortgagor have notice of the person to whom such assignment or transfer is made.

The person to whom a chattel is pledged has the right to use it, nor is the pledgor discharged if the thing pledged is destroyed by use: *e.g.* Kudwo pledges his cloth to Kwow for a dollar. Kwow has the right to use the cloth, and Kudwo is bound to repay the dollar so long as the pledgee can restore the cloth, even if in a torn and worn-out condition.

No person can sell a chattel pledged to him until the owner on being requested to redeem has failed so to do. Where the owner is dead or not to be found, his immediate successors or relatives must have notice of the intended sale of such pledged article before the pledgee can safely sell.

The pledgee cannot purchase from himself any article pledged to him unless the owner thereof, or some one claiming through him, had gone into accounts with the pledgee and consented to his taking the chattel, in full or part satisfaction of the debt.

[1] *Amonoo* v. *Abbakuma*, 1 F. L. R. 157; *Ashong* v. *Barng*, 1 F. L. R. 153.

Where a mortgagee or pledgee realizes his security and finds there is still a balance due, he cannot call on the mortgagor or pledgor to make up the difference. If his security has turned out insufficient, he has to thank himself for his simplicity. The debtor, however, is bound to make good the balance, if the creditor sold it by his instructions or with his approval. If, on the other hand, the security realizes more than the debt, the surplus must be paid over to the debtor or his personal representative. Once a pledge or mortgage, always a pledge or mortgage.[1]

(*c*) LOANS

A loan is the lending of an article to another person called the borrower, for the use of such borrower, either gratuitously or for valuable consideration.

The property in an article borrowed remains in the owner, whether the borrower himself have it in his possession or not.

The borrower is bound to exercise the greatest diligence and care for the safety of the article borrowed, for if the thing borrowed is injured through his carelessness, he is bound to make an equivalent restoration.

If the thing borrowed be injured or lost by act of God, he is not liable if his own negligence did not conduce to such loss or injury. If the thing be lost by any other cause whatsoever, the owner at his own option can claim the value or an article of like nature and quality.

Where the borrower fraudulently deals with property borrowed, or uses it for a purpose different from that for which he told the owner of the thing, he is liable, not only to return it, but also to account for any profits accruing therefrom.

E.g.: A lends his cutlass for a month to B, who said he wanted to cut some bamboo trees. B does not use it to cut bamboo trees, but to cut down odum wood. A can claim his cutlass back before the end of the month, and compel B to give compensation from the proceeds of the odum wood.

If B had not shown for what purpose he required the cutlass, A could not demand any compensation.

The most common kind of loan is that for money. Here the lender invariably asks for a surety or security, and in the absence of a special and distinct contract, the rate of interest is fifty per cent. on the sum advanced, the principal and interest being pay-

[1] *Incroma* v. *Marmoon*, 1 F. L. R. 157.

able at an indefinite time not less than a year, and even then after notice. The said interest of fifty per cent. is added once for all; other lower rates are fixed, according to an agreement of the parties. Among the Wassaw people, for each extension of time not less than a month extra interest is charged.

(*d*) SALE

Dealing with the native law and custom relating to the sale of land, where the English language or a written instrument is not used, the careful student will doubtless not fail to observe that, of all things, land is about the last thing which became the subject of an out-and-out sale. Owners of land were as reluctant and unwilling to part with their land and inheritance as was Ephron, the Hittite, to sell a burying-place to Abraham, as recorded in the Holy Writ. Rather than sell his land, the Fanti landowner prefers to grant leave to another, a friend or alien, to cultivate or dwell upon it for an indefinite period of time, thus reserving unto himself the reversion and the right to resume possession whenever he please.

This is the reason why the first European settlers could not buy the freehold of the site of their forts and castles, but had to give pay-notes, securing to the owners of the land certain annual rents.

Before the prohibition of slavery and pawning on the Gold Coast, rather than part with the family inheritance, members of a family have cheerfully volunteered to be sold to raise money for the payment of a pressing family liability. But in process of time, and especially since the emancipation of slaves and the prohibition of slavery, the sale of lands has been of more frequent occurrence in the coast towns.

The inhabitants of the more inland districts are very conservative, but the native laws and custom relating to the sale of land have not changed at all, and the decisions of the Judicial Assessors thereon are as applicable to-day as then.

* * * * * * *

It has been already stated that in ancient days the sale of land was not of general or common occurrence, and to-day there are some parts of the Gold Coast whose inhabitants will not sell any of their lands.

But the sale of the produce on one's land is a very ancient custom. In the palm-oil producing districts there exists the cus-

tom of selling the palm crops of a specified field, for one or more seasons, and the purchaser is entitled to enter on the land with his servants to gather the nuts and make the oil on such land. While engaged in this work they may eat some of the plantains there growing, but must not remove any for sale.

On the same principle landowners sell growing timber for a lump sum of money, which the purchaser has the right to cut down on and remove within a reasonable time, from a piece of land, the name of which is given, or the boundaries thereof are mentioned or shown. When the trees are cut down the land reverts to the owner, although the felled timber can be removed afterwards. Unfortunately, it has been found in several instances, that landowners have been made to put their names and seals to documents in the English form, under the belief they were selling only the timber on such land, when, as a matter of fact, they were parting with the entire ownership of such lands. It is satisfactory to state, that many conveyances of this kind, having been detected by the Concessions Divisional Court at Axim, were abandoned by the claimants thereof.

The right to collect or manufacture rubber on payment of a lump sum is more in the nature of a licence for valuable consideration than of sale of the rubber.

Generally when any land is sold, and the ownership is parted with, the purchaser becomes the owner of everything, including the minerals in such land, for the common saying is, "If you find a treasure-trove on your land, you are entitled to it; it is your luck." But in such mining districts as Wassaw, Sefwhi, Apollonia, and Aowin, the purchase of lands does not include the minerals. The ownership of the minerals is vested in the king's stool. When the purchaser mines, he is bound to give to the stoolholder the usual Ebusã; if, however, he allows others to mine, he is entitled to claim from them one-third as his Ebusã, and of this the stool-holder gets a third.

When the owners of the land consent to sell, a day is fixed for inspecting the land. The owners of land adjacent to and abutting upon land under inspection are invited to be present, so that disputes as to boundary marks may be averted in the future. Where the land is a town plot, and the intending purchaser knows it, an inspection may be waived.

In the contract of sale, whether of immoveable or moveable property, one is ever reminded of the saying, *Obi nto nantwi anamon*, "Nobody buys the footprints of a bullock."

Having determined upon the identity of what is to be sold, and the interest which the buyer is acquiring, the price is fixed, and is payable in gold or silver. In former days purchases were made by barter. The Fanti word for trading is *Batta*. This word is used by Asanti and other traders, and is not a corruption of the word "barter." [1]

Then is paid the earnest-money (Trama). This binds the contract, for without the payment of Trama to the vendor no contract exists, and he is at liberty to sell the land to some one else for a larger price; the intending purchaser can withdraw his offer and repudiate the contract without being liable to any damages, although the Trama becomes forfeited; but if any part payment has been made, it is doubtful whether it can be recovered. In this connection is the expression, "If you have not eaten anything you do not pay for it." *Basel Mission Factory* v. *Bruce*, 2 F. L. R. 99, will repay a careful study, and will be found very interesting, instructive, and useful. In that case the defendant purchased a piece or parcel of land from one Jacob Vanderpuye on April 23, 1899, for one hundred and seventy-five pounds, of which he paid eighty pounds down; the balance, ninety-five pounds, was to be paid three months afterwards. The purchaser did not receive a deed or any document, but at the trial he called evidence to show, and the Court found, that the sale was a valid one by native law. The plaintiffs alleged they had bought from the same Jacob Vanderpuye a larger piece of land, of which this formed a portion, for three hundred and eighty pounds, and had received a deed of conveyance for the same on June 19, 1899, which had been duly registered as required by sect. 17 of the Registration Ordinance, 1895; and, further, as they were not natives, the customary law relating to sales should be disregarded. The Court decided that the land in question had been validly sold to the defendant prior to its sale to the plaintiffs, and gave judgment in favour of the defendant, and this was, on appeal, confirmed.

The Trama is sometimes distributed among the witnesses to the contract, as token of their presence when the bargain was struck; but it is more usual for the vendor on receiving the Trama to give to the witnesses a distinct amount of money.[2]

The drinking of palm-wine, rum, gin, or other spirits is not an essential part of the contract of sale.

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[1] *Cobbold* v. *Taweia*, 1 F. L. R. 179.
[2] *Quay* v. *Aywoodsuah*, 1 F. L. R. 163.

In the absence of agreement reserving the crops on the land which are to be removed as soon as possible, or within a specified time by the owner, the purchaser of a piece of land is entitled to all that is thereon and within it.

He who offers anything for sale thereby implies he has a right or is authorized by the true owner or owners to sell and part with the ownership therein, and to give a good title to the purchaser. Where the title is found defective, the purchaser can demand his money back, and all expenses incurred must be repaid by the seller, whose personal representatives are not liable. If, therefore, a man buys from another, and after the death of the seller the purchaser discovers his title defective, he has no remedy, for if he wished to protect himself, he should have specially contracted with the seller for good title and included his successors or heirs. No earnest-money (Trama) is paid in simple purchases or in barter. In the sale of lands and slaves, and for a large quantity of goods at one sale or transaction, Trama must be paid.

In contracts for the sale of chattels and merchandise, as soon as Trama is paid, the purchaser is entitled to their possession on payment of the agreed price. If he fail to complete the purchase, he forfeits the Trama, but he does not seem to be liable to any damages for breach of contract. The vendor cannot compel the purchaser to perform his part of the contract; on the other hand, in the absence of the Trama, the purchaser cannot, by tendering the price agreed upon, compel the vendor to give him delivery. The respective positions of the parties, and their freedom from liability, are tersely stated in the well-known trade expression, current on the West Coast of Africa, "No buy, no pay."

(*e*) TESTAMENTARY DISPOSITIONS

The Customary Law knows nothing of wills in writing, and even in the matter of testamentary dispositions the members of the family exercise much influence.

Cruickshank describes the ceremony of will-making, as he calls it, which is still common among the people. "In view of death, the head of the family summons around his death-bed his relations. He instructs them about the state of his affairs, and how his property was acquired, and how to be disposed of. He is most particular to furnish them with proofs respecting the acquisition of his pawns and slaves, mentions the names of the witnesses to the transactions, the circumstances under which they took place, and the sums paid for them, in order that his successor may be

enabled to defend his rights, in the event of their attempting to obtain their liberty or redemption at the death of their master. He also recounts the names of his debtors with the sums which they owe to him, as well as the debts which he owes to others. His death-bed declarations, made in the presence of responsible witnesses, are always received as evidence in the event of litigation afterwards." The curious inquirer may here be informed how suggestive are the death-bed scenes of the patriarch Jacob, as recorded in the sacred writ (Gen. xlix.), and that of King David.

Now, it has been affirmed as a general proposition by Sir Henry Maine, in his "Ancient Law," that in all indigenous societies a condition of jurisprudence, in which testamentary privileges are not allowed, or rather not contemplated, has preceded the latter stage of legal development in which the mere will of the proprietor is permitted, with more or less restrictions, to override the claims of his kindred in blood. And even among the Romans, a will was never regarded by them as a means of disinheriting a family or of effecting the unequal distribution of a patrimony, and the rules of Law preventing its being turned to such a purpose increase in number and stringency as the jurisprudence unfolds itself. *Samansiw* is, in fact, not a word that accurately conveys the conception of a will as understood by an English lawyer, for the idea of making a disposition of property to take effect after the death of the giver, as has been noticed by observant European travellers on the Gold Coast, is really opposed to the fundamental principles of the ties binding the members of the family.

Without doubt, the custom of making wills with respect to self-acquired property is of modern growth, but no one can tell when the practice first began. Death-bed dispositions, known as *Samansiw*, seem to be recognized, not so much because of any assumed right to make such a disposition, as because, from feelings of affection, respect, or even superstition, the last wishes of the deceased are considered to be entitled to weight, among the members of his family. And this idea runs through the Customary Law relating to testamentary disposition of property. In fact, the only disposition of property known to the early Customary Law was a transfer followed by immediate possession. Contact with British rule in the old settlements gave rise to the practice of reducing into writing such transactions, and writing has in some localities become common, not so much because it is essential for the validity of transfer, but because it is a permanent record of such occurrence.

A stool-holder, or chief, or head of a family, or the manager of family property, has no power by testamentary disposition to alienate any part or portion of the family estate, moveable or immoveable, from the family. He may suggest some one to be his successor, but on his decease the people of the stool or members of the family may or may not act upon his suggestion or recommendation (*Coffie Yammoah* v. *Abban Cooma*).

The owner of self-acquired property can in his life time deal with it as he pleases, and where he intends to give the whole or a portion of it to his child by a freeborn wife, Adihiwa, or to any person not a member of his family, he does so before his death. As soon as he dies, his successor is entitled to all the property he died possessed as heritable and ancestral estate, subject to the usual rules of inheritance; of course the successor may give heed to the expressed desires of the deceased, who may have been taken ill so suddenly as to have been unable to accomplish his intention respecting the disposal of his property.

Where the owner of self-acquired property gives testamentary directions as to its disposal among the members of his family, who thereby take such property as heritable or ancestral property, the person, who would otherwise have succeeded to the deceased, cannot ignore such dispositions, and the persons benefited have a right to enforce such bequest.

E.g. Kwesi, owner of Addum and Donpim lands, four bendas, a house, and twelve pieces of salagha cloth, makes testamentary disposition, bequeathing Addum land to his son Kudwo, Donpim land to his youngest niece Araba, two bendas to Aduku, his younger brother, two pieces salagha cloth to Baidu, his friend. The said Kwesi had a mother, elder brother, and three sisters him surviving. By the Customary Law, his son Kudwo cannot take Addum land unless his father placed him in possession before his death; Araba is entitled to Donpim land, and can enforce her right to possess the land, she being of the heritable blood; and it is only on the failure of her issue to succeed that the other members of her family come in. Aduku also is entitled to take the two bendas, but Baidu cannot compel delivery of the two pieces of salagha cloth, if the mother, eldest brother, or the sisters refuse to deliver them to him. The owner of self-acquired property, after solemnly making his testamentary dispositions, may subsequently revoke a part or the whole of them.

Where a woman, having issue or descendants, possesses self-acquired property, her testamentary declarations as to the disposal

of her property among her children and grandchildren are binding. When she fails to make such disposition her mother is her successor, then her children by seniority, failing whom, her sisters and brothers by seniority. So long as her children and their issue are alive, the right of the brothers, sisters, and sisters' issue is subordinate to that of her own children.

The property of her son, which a mother succeeds to, is at her absolute disposal, and she can do whatever she pleases with it; but she has only a limited or at the most a life interest in property which comes to her from her deceased daughter leaving issue.

E.g. Amba has two daughters, Effua and Abba, both having issue, and sons Kwesi, Kobina, and Kwow. Effua, the possessor of four bendas, and Abba, the owner of a piece of land and some valuable beads, and Kobina, possessing a house, chattels, and some money, die, each leaving children, but without making any testamentary disposition: the mother takes the property of her son Kobina, and of this she has absolute control. She may appoint the youngest son Kwow to be Kobina's successor, or even give the estate of the deceased son to any of her grandchildren by her daughters Effua and Abba, and such person will hold the property as heritable or ancestral property. The said mother has only a limited interest, however, in the estate of her daughters, for the right of children to succeed to their mother is superior to that of their grandmother.

A stool-holder, who had kept his self-acquired property distinct from the stool property, to the knowledge of the senior and immediate members of the stool, can make a valid testamentary disposition of such self-acquired property to a member of the family. The Customary Law does not permit any person to bequeath to an outsider a greater portion of his property than is left for his family. Nor does the Customary Law permit any testamentary disposition, by a man weak in intellect, or imbecile, or insane, or under the influence of fraud or misrepresentation, to stand, or to be regarded at all.

It is not only on the death-bed that a man can make testamentary disposition. A person can make his testamentary disposition while enjoying perfect health; but at the time it is made, the witnesses must be distinctly told by him his words are his *Samansiw*, to take effect after his death. A subsequent *Samansiw* does not necessarily cancel or revoke a previous one, unless it is incompatible therewith.

Where a person, by testamentary declaration, releases his debtor

from payment of any claim he may have against him, or directs that a person in possession of the testator's chattel shall retain it as his own, it is binding on his successor and other members of the family, who cannot claim from such debtor the amount of the debt, or from such legatee his legacy; for, says the Customary Law, what is given under such solemn conditions cannot be recalled; the acts of gratitude should be cherished, and an act of restitution that calms a guilty conscience pricked with remorse should be respected.

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VI. SUCCESSION

The first important rule which one has to learn and ever bear in mind when dealing with matters of succession is that the right of inheritance is only through the female, and pedigree is traced through the female line and *that* only.[1]

There is no such thing as succession, in the proper English meaning, in a family owning ancestral property. The whole family, consisting of males and females, constitutes a sort of corporation; some of the members being coparceners, *i.e.* persons entitled to a portion of the property on partition (cutting Ekar), and others who are dependents, and are entitled to reside in the dwelling-house for life, such as sons and daughters, subject to good conduct and not disputing right of the family. Partition being extremely rare, the idea of heirship scarcely presents itself to the mind of any member of the family. The members are entitled to reside in the ancestral house, and to enjoy that amount of affluence and consideration which springs from their belonging to a family possessed of greater or less wealth.

The head of a family holds his property either in severalty or in coparcenary, and this depends whether the property is self-acquired, family property, or ancestral property, and, if the last, whether it be attached to some political or public office.

The right of inheritance to ancestral property attached to a public or political office, varies as to whether such property is enjoyed with or without the immediate or remote control of any person. For example, in the case of a captaincy (Tufuhin) or other commanding position in a fighting force, without election no one can fill the post left vacant by his father or uncle or brother.

[1] *Abbacan* v. *Bubuwooni*, 1 F. L. R. 213; *Parker* v. *Mensah*, 1 F. L. R. 204; *Holdbrook* v. *Atta*, 1 F. L. R. 211.

Where the property is under or subject to another stool or head of a family, either by commendation or subjection, or by any other means, the superior lord or head of the family has an ultimate and absolute right of veto, whenever the person selected or elected by the retinue or members of the family is considered unfit or unsuitable by him.

E.g. Kudwo, brother or nephew of X deceased, is chosen by his family to sit on the stool under Y, whose chief he was. If the blood relatives and domestics and bondmen of the family concur, the proposal must be confirmed by king Y, before Kudwo can be placed in the room of X deceased. And on the failure of the blood relatives, domestics, and bondmen to present a suitable person, the king may himself choose one of the blood relatives; and this person will succeed if accepted by the major part of the family or people of the subordinate stool, otherwise one of the domestics or bondmen is to be appointed as the manager or trustee for life or for a specified period of the family possessions.[1]

The owner of self-acquired real property dying intestate, is not succeeded by his sons, they being outside the line of inheritance, but by his mother and her issue according to seniority.

Persons in the line of succession are: —

Mother.

Brothers, according to seniority.

Nephews, by seniority.

Sisters.

Sisters' daughters.

Failing these —

Mother's brothers, by seniority or election.

Mother's sisters.

Mother's sisters' children.

Failing these and their stock, the domestics in whose veins runs any of the heritable blood, take by seniority. Next, the head domestic; lastly, a member of the tribe. Provided always that a man is invariably preferred to a woman. Hence the saying, "Obaa odan bayin" (a man is the mainstay of a woman).

There are therefore four kinds of successors, viz. Real, Proper, Ordinary, and Extraordinary.

The Real successor of a person is his mother.

We call those persons *Proper* successors who are the uterine brothers and sisters of the deceased, and the issue of such sisters; but never can the pedigree be traced out in the line of the male.

[1] *Amfoo* v. *Yardonua*, 1 F. L. R. 198.

Ordinary successors are such persons as are descended from the maternal grandmother:

E.g.: A person's uncle or aunts, and the issue of such aunts.

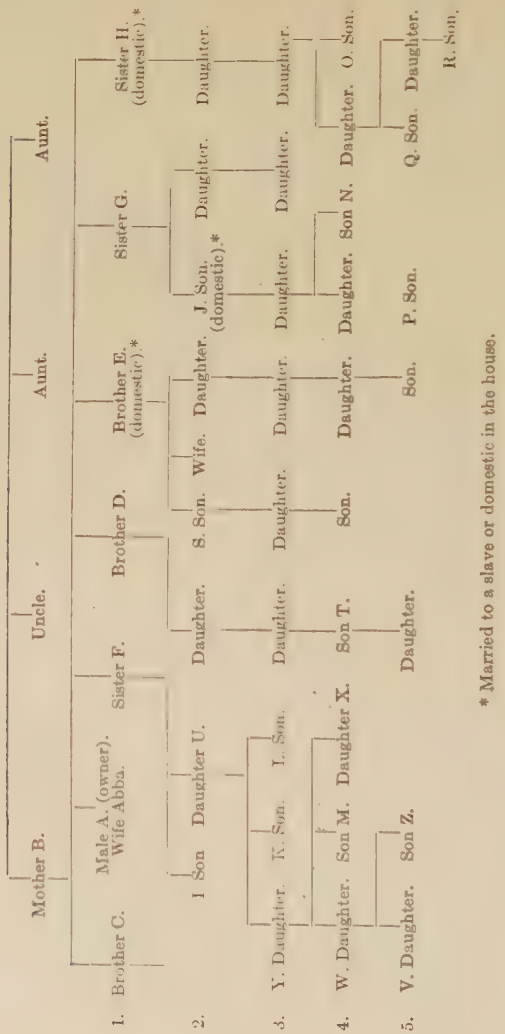
Extraordinary successors are: —

(i.) Issue by a house domestic with a male person of the heritable blood (Dihi).

(ii.) Domestic.

(iii.) Clan or tribal relative.

The rule of succession may be made plain perhaps by the following pedigree or table of descent: —



In the above pedigree A, a male, is the owner of self-acquired property. On his death, his wife Abba does not succeed to his property, but his Real successor is his mother B; she waiving her right, his brothers C, D, and E take by seniority. Failing the brothers C, D, and E, his successor is found among his nephews, that is, children of his sisters F, G, and H.

The nephews are I, son of his sister F; and J, son of his sister G. These take by seniority; if, therefore, J, the nephew by his younger sister G, is older than I, J has a better right to the succession.

If the nephew I or J be older than the brothers C, D, E, such nephew can be preferred over the brothers C, D, E, and the sisters F, G, H, to succeed A, and although the brothers are capable to succeed, yet any of them can waive his right in favour of one of the nephews. On the death, however, of the nephew, the right of the brother passed over or who waived his right revives. Failing the brothers and nephews, the next persons in the succession are K and L; next to them are M, N, and O, then P, Q, and R. The persons so named are those who can be placed on the stool, if any, and can become head of the family. If any of them cannot succeed when it is his turn, and there is no proper person available, then S, a son of E, by a domestic of the house, or a suitable domestic is appointed manager of the property. It seems that where a house-born son as S is appointed guardian trustee, or manager, he holds his post for life, although he can resign in favour of any of the proper successors becoming fit to inherit.

The sisters F, G, and H are the natural and proper guardians of the property during the incapacity or minority of the proper successors, but their management of such property and their control goes by seniority, the eldest, F, taking before G and H. Where the nephews are capable to look after the property, they take by turns: *e.g.* if the three sisters had three sons each, after the death or deposition for misconduct of the eldest son of the eldest sister, one of the sons of the second sister will be entitled to succeed to the uncle's property, and on his death the eldest son of the youngest sister will be next entitled, and one branch will not be exhausted before those of the other branch come in.

Suppose K, a son of U, the daughter of F, who is the sister of A, had died, leaving self-acquired property. After his mother he will be succeeded by L, then by M, his nephew, who will be in his turn succeeded by Z, his grandnephew, and not by O, the great grandson of H, who cannot succeed until the issue of Z's sister, V, becomes extinct. When that line becomes extinct, some say any

son of Z by a domestic takes in preference to O, who is blood relative, and the ordinary successors of K, both persons tracing descent from a common ancestress B, and failing the descendants of B, the persons entitled must be found by finding the descendants of A's aunts.

When a person such as A dies, having his own acquired property, moveable and immoveable, he is not succeeded by his sons, free-born or domestic, whose only right is that of a life interest in the dwelling-house built by their father, the deceased, on a land, not family property. For if the house be built on family land, the children have only right of occupation during good conduct. If any one living in the house of his father deny the right of the proper successor, or commit waste or injure the house, or encumber or sell it, he thereby forfeits his life interest. Such person must make the necessary repairs, and may quit if the successor requires it for himself as a residence.

Mr. Eminsang, giving his opinion on *Boham and another* v. *Marshall* (May 18, 1892), says: "By native law, Anna Boham had a right to the house, as she was the sister of John Boham. By native law, she was the only heiress at the time. She could by native law have power to give the house to the children for their natural lives. Of the part so given to the children, unless Marshall gave the children an equivalent, he could not turn them out of the house. Marshall can pull down his portion of the house, if he did not interfere with the other portion.

"By the Court: By native law, the person succeeding to property could not dispose of it to beyond his lifetime, unless with the consent of the families. In this case, the plaintiffs being the children of John Boham, have the right to remain in their father's house during their lives, unless for good reasons. If the children do not live in their father's house, still if they can go and live there as they will, the heir could not break the house down and dispose of the materials. The heir is the one to repair the house, and if the children are in a position they contribute towards the expenses."

The latter part of this opinion is, we submit, erroneous. Children who leave their father's house for their own family or private house, cannot stop the father's successor breaking down the house, and if they alone reside therein, they must keep the house in repair. Where, however, the successor resides in the same house, he of course sees about the repairs.

In *Hallmon* v. *Daniel*, August 22, 1871, Chief Koffie Chie and others laid down the law, in answer to the inquiry: — If a man went

from his family, cleared land, and on that land built another house, would not his children be entitled to live in it after his decease? that "if a man had a father, either by country marriage or otherwise, and the father lived in the house with the wife and child, and he died, all the deceased's property, except the house, goes to his family. The father's gun and sword and house go to the son, and the saying is, 'the father dies and leaves his house to the son.'

"The family take the property, but do not turn away the child. The son lives in the house with the family of his father, supposing they had nowhere else to live, and the son does not turn them away. If it is a family house, the head occupies as head; yet he does not turn away the son from the house, except the son, after he has grown up, finds himself competent to build and leaves for the purpose of doing so. But he would not under any circumstances be turned out by the head of the family.

"The family would not be turned out for the son's accommodation. If they had nowhere else to live, they would live in the house. Where there is room enough for all (son and family), the head of the family arranges the rooms to be allotted to each. My answer of the descent of house to the son applies in case it has been built by the father. The family would be allowed to live in it if they had nowhere else to go; if they had, they would leave the father's house to the son. The son could not sell the house except with consent of the family."

In the coast towns, one now and then comes across what at first sight seems to be an exception to the general rule of succession. There are some families where succession goes from father to son; but this has reference only to the dignity or title or office, with such property or insignia going with it, and which was in the first instance created with it. Such a position is quite distinct from that of head of family, although a person may hold the two offices at the same time: *e.g.* B is head of a wealthy family having and possessing a large retinue. The townspeople make him their king, or chief, and give him by general contribution a sword, robes, drum, etc. If at any time the people depose him, the only property they can take from him will be what was handed him on his installation as king or chief, at which time he took the oath of office, swearing to be true and faithful to the interests of his subjects. And unless the members of his family remove him, he nevertheless continues head of his family, although another person be given the public honour and office.

Where the deceased is a slave or domestic, his master or mistress is entitled to take all the property, but if another slave or domestic is appointed as successor, the master or mistress takes from the personal effects whatever he or she pleases.

If a person whose ancestress was a slave die without issue, there being no descendants of the ancestress's master or mistress, his fellow domestic takes his property as successor: *e.g.* B is great-grandchild of C, a donkor of A; D is descendant of A, and there are in the family (i.) several domestics, (ii.) but one domestic. On the death of B, D may keep B's effects or give some to such one of the domestics as he please. If there be no descendant or heir of D her surviving (i.), the head domestic succeeds; (ii.) the one domestic takes, and no tribal or clan relative can take preference, for the donkors invariably acquire their owner's tribal name, and bondmen often join the master's tribe.

He who succeeds a person owning self-acquired property is liable for and bound to pay the private debts of the deceased, whether the assets are or are not sufficient. An heir, if he sees that his deceased relative is greatly indebted, can give the body to the company of the deceased, and on the body being buried at the expense of the company or the public, the heir and his family are not liable at all for any debt of the deceased. Any property left by the deceased is sold by the public to defray any burial expenses.

In the early part of 1891, Chief Justice Hutchinson sought information on certain points of the Customary Law from the late Edmund Bannerman, of Accra, that eminent solicitor and advocate whose knowledge of the Customary Law and experience in the Law Courts were unsurpassed.

Mr. Bannerman's opinion relates specially to the Accra district, but it will be noticed that the Accra customary laws differ very little from what have been explained herein. Says Mr. Bannerman: "Before answering the first question, it will be as well to explain that there are two forms of marriages obtainable in the Accra country proper, namely, what is known as the *two-cloth*, or *sweetheart*, and the other is *six-cloth*, or legal marriage. With reference to the first, personal property only descends as follows: (*a*) to the uterine brothers of the deceased, the eldest taking first; (*b*) failing the brothers, the uterine sisters and their children take by seniority.

"The children by the *two-cloth* marriage do not come in at all.

"(*c*) With reference to the second, that is, *six-cloth* marriage, real property descends the same as personal property, with this

exception, that it is inherited in conjunction with the children of the deceased of that marriage, and such real property cannot be disposed of without the children's consent. It must be borne in mind that in the Accra country males take precedence of females, and if minors, the eldest female takes charge until the eldest male be of age. I am well aware that opinions varying in part to mine have been given, but it is most absurd to think that there should exist two forms of marriages, one superior to another, and yet the claims of the children of one marriage to their father's property is the same as the claim of the children of the other.

"(*d*) Property acquired by the deceased, he can either in writing or verbally will away to whomsoever he pleases, but should he die intestate, it then descends according to (*a*), (*b*), and (*c*).

"Property inherited descends precisely in the same manner as property acquired, with the exception that the deceased has no power to will it away, as in the case of property acquired.

"The mother does not come in at all, but the inheritor of the property is bound to take care of her *durante vita*, and at her demise to bury her decently.

"A woman's property acquired by herself descends to her children and their children; failing them, then to brothers or sisters according to age.

"No child can inherit his father's property except under the circumstances related in (*a*), (*b*), and (*c*).

"There are instances where the son has inherited the stool and property *strictly attached* to the stool; *e.g.* the case of King Frederick Dowoonah, of Christiansborg, Accra; but generally inheritance of stool jumps from one branch of the family to another and back again. Should the holder of the stool, however, acquire any property of his own *durante vita*, that property cannot go to the inheritor of the stool, but must descend as stated in (*a*), (*b*), and (*c*).

"No man can appoint an inheritor to property which he inherited, but the property acquired by himself. The inheritor appointed may be a person who is not the next heir, but such person must go through the formality of custom, making expenses of funeral and paying all the deceased's just debts.

"The right of the heir of personal property is absolute, but he is bound to assist any member who is in real distress.

"The heir is bound himself to pay all the just debts of the deceased's, and also the expenses of the funeral custom.

"Any person not being the heir, but who with the heir's consent

performs and pays for the custom, does not acquire any right whatsoever to the property, but has simply to be reimbursed for what he has expended.

"The heir can be superseded by other members of the family on the ground of insanity, imbecility, extravagance, etc. There need not be a majority to supersede him. Two or three of the nearest members are quite sufficient for the purpose.

"Should a man die without any known heir (a thing utterly unknown as regards natives), his property would be taken charge of by the owner of the house in which he stayed when he came into the country, who will see all funeral expenses and debts paid; and should any heir ever turn up, he or she alone is responsible to him or her.

"Any child can inherit the property of his mother, bastardy being a thing hardly recognized in this country."

Bosman, writing on inheritance, says: "The children they have by their wives are indeed legitimate, but all along the Gold Coast (they) never inherit their parent's effects except at Accra only. The right of inheritance is very oddly adjusted, and as far as I could observe, the brothers' and sisters' children are the right and lawful heirs in the manner following: They do not jointly inherit, but the eldest son of his mother is heir to his mother's brother or her son, as the eldest daughter is heiress of her mother's sister or her daughter. Neither the father himself nor his relations as brothers' sisters have any claim to the goods of the defunct. In deficiency of the above-mentioned heirs, the brothers or sisters take their place; but if none of them are living, then the nearest relation of the mother of the defunct comes in.

"The eldest son, supposing the father a king or a captain of a town, succeeds him in his office only; but besides his father's shield and sabre he has nothing more to pretend to. So that 'tis here no manner of advantage to be descended from rich parents, unless (which seldom happens) paternal love obliges them to bestow somewhat on their children in their lifetime, which must be privately done, otherwise the relations after the father's death will oblige the children to return it to the utmost farthing." (Bosman, letter xii. pp. 203, 204.)

John Barbot, the agent-general of the French Royal Company of Africa and islands of America, who was a contemporary of Bosman, in connection with this custom, says: "The best reason the blacks give for such a constitution, is, that the dividing of estates or goods among so many persons as generally compose their fam-

ilies, so many wives and children, would occasion endless disputes and quarrels amongst them; or, this, that children relying too much on their father's wealth, would live lazily, without any inclination to employ themselves in some business, to avoid lewdness, wantonness, and debauchery. Whereas being now sensible from their tender youth that they have nothing to expect from their father but a bare maintenance during his life, they are much the readier to betake themselves early to learn some profession by which they may maintain themselves handsomely when their father is no more; and even to maintain their father's family after his death, as many do."

VII. MODES OF ENFORCING PAYMENT

There are several modes of enforcing payment of liability more or less common. I. "Dharna," a practice well known in India, especially in the native states. The word "Dharna" is said to be an exact equivalent to the Roman *capio*. The person who adopts this means of enforcing payment of his claim goes early in the morning to the door or house of the person against whom it is directed, or to the place where the debtor usually follows his occupation. Here the creditor, covered over with white clay or in sackcloth and ashes, and having a supply of food sufficient for one meal, seats himself on a mat or on the bare ground. He informs the debtor that unless the debt is paid to the last farthing he will not go away, and if the debtor goes out this creditor follows him everywhere. Instances are known where the debt not having been paid the creditor has died of starvation. Sometimes, as the day draws to a close, the creditor swears to commit suicide if the debt be not paid before sunset. If in such a case the debt be not paid, and the creditor doth commit suicide, the debtor is bound to bear the funeral expenses in addition to paying the original debt and making substantial compensation to the family of the deceased creditor. But when the creditor swears that if by a certain time the debt be not paid he and the debtor must both forfeit their lives, the debtor cannot save his life by simply paying the debt and a compensation; he too must take away his life.

It is worthy of notice that in the Brehon law, if a person has a legal claim against a man of a certain rank, and is desirous of compelling payment, the law authorizes him to "fast upon him." Notice, it says, precedes distress in the case of the inferior grades, except it be by persons of distinction or upon persons of distinc-

tion; fasting precedes distress in their case. (Ancient Laws of Ireland.) This institution is said by Sir Henry Maine to be unquestionably identical with one widely diffused throughout the East, and known by the Hindoos as "Sitting Dharna," which consists in sitting at your debtor's door and starving yourself till he pays.

II. There are two kinds of Panyarring, namely, (*a*) persons, (*b*) chattels.

(*a*) Among the coast tribes and members of the same tribe, panyarring of persons was not customary. When a member of a different tribe was found in a distant place he was liable to be seized with all his goods, and detained in bondage for a debt due by a member of his tribe till such debt had been paid to the satisfaction of the person or creditor who had so detained him.

(*b*) A creditor whose claim remains unsatisfied after repeated demands, followed by unfulfilled promises or payment by the debtor, is entitled to seize his debtor's goods and chattels, usually of a higher value and retain them till his claim is satisfied in full. The creditor has no power or right to sell the goods so seized or to use them; but he is under no obligation to take any special care of them, or to account for their safe custody or keeping.

Panyarring (pronounced payaring) is rather a law than a custom, and although sometimes prostituted to bad purposes, is frequently the only way to recover a just debt. If exercised unlawfully, the amount of damages to be paid as satisfaction is so much as to cause the financial ruin of the wrong-doer.

III. Payment of debts is also enforced by the debtor being detained in custody, imprisoned in chief's prison or at the village lock-up till payment is made. The debtor meanwhile has to subsist himself or get his family or friends to do so, failing which he is forced to do hard labor by way of return for his board. So effective is this custom that, except in very rare cases, the debtor's family quickly make a contribution and pay the debt in full. During the administration of the African Association and Governor Maclean, judgment debtors were never subsisted by their creditors. On their friends failing to look after them, they were compelled to earn their food by being put to some remunerative occupation within the precincts of the prison.

PART III

ANCIENT AND PRIMITIVE LAWS AND CODES

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Chapter XIII

ANCIENT ACCADIAN LAWS[1]

1 A certain man's [2] brother-in-law hired (workmen) and on his foundation built an enclosure. From the house (the judge) expelled him.

2 In every case let a married man put his child in possession of property, provided that he does make him inhabit it.

3 For the future (the Judge may) cause a sanctuary to be erected in a private demesne.

[1] [Translated by Rev. A. H. Sayce. Reprinted, by permission, from "Records of the Past," Vol. III, p. 21, *seq.*, Samuel Bagster and Sons, London.]

Translator's Note

The Accadians were the inventors of the cuneiform system of writing and the earliest population of Babylonia of whom we know. They spoke an agglutinative language allied to Finnic or Tatar, and had originally come from the mountainous country to the south-west of the Caspian. The name *Accada* signifies "highlander," and the name of Accad is met with in the 10th chapter of Genesis. The laws, of which a translation is given, go back to a very remote period; and the patriarchal character of society implied by them will be noticed, as well as the superior importance possessed by the mother, denial of whom by the son involved banishment in contrast with the milder penalty enjoined for renunciation of the father. This importance of the mother in family-life is still a distinguishing feature of the Finnic-Tatar race. The slave, it will be seen, was already placed to some extent under the protection of the state, and the first step on the road towards the amelioration of his condition had been made.

A considerable portion of the tablet which contains these laws is given in Vol. II, pl. 10, "Cuneiform Inscriptions of Western Asia." Other fragments, since discovered, have been lithographed by M. *François Lenormant* in his "Choix de Textes Cunéiformes," Part I, No. 15. The original Accadian text runs down the left-hand column, an Assyrian translation being annexed on the right. The several laws are divided by lines, and come at the end of a bilingual collection of ancient documents of different kinds but chiefly relating to law. They are introduced by a list of Accadian legal terms with their Assyrian equivalents. The whole was compiled for Assur-bani-pal's Library. Mr. Fox Talbot was the first to point out the nature of the inscription; and I gave a translation of the published portions of it in the "Athenæum" for May, 1869, which was supplemented by Mr. G. Smith in a later number of the same periodical. Translations of the most important part of it have been recently given by M. Oppert in the "Journal Asiatique," 7 ieme série, I, and M. F. Lenormant in "La Magie chez le Chaldéens," pp. 310, 311.

The first and second columns, on the obverse of the tablet, are unfortunately too mutilated for translation. It is therefore only the last two columns, on the reverse, of which a rendering is appended.

[2] Literally "his brother-in-law."

4 (A man) has full possession of his sanctuary in his own high place.
5 The sanctuary (a man) has raised is confirmed to the son who inherits.
6 *Effaced.*
7 His father and his mother (a man) shall not (deny).
8 A town (a man) has named; its foundation-stone he has not *laid;* (yet) he (can) change it.
9 This imperial rescript must be learnt.
10 Everything which a married woman encloses, she (shall) possess.
11 In all cases for the future (these rules shall hold good).
12 A decision. A son says to his father: Thou art not my father, (and) confirms it by (his) nail-mark (on the deed); he gives him a pledge,[1] and silver he gives him.
13 A decision. A son says to his mother: Thou art not my mother; his hair is cut off, (in) the city they exclude him from earth (and) water [2] and in the house imprison him.[3]
14 A decision. A father says to his son: Thou art not my son; in house and brick building they imprison him.
15 A decision. A mother says to her son: Thou art not my son; in house and property they imprison her.
16 A decision. A woman is unfaithful to her husband and says to him: Thou art not my husband; into the river they throw her.
17 A decision. A husband says to his wife: Thou art not my wife; half a maneh of silver he weighs out (in payment).
18 A decision. A master kills [4] (his) slaves,[5] cuts them to pieces, injures their offspring,[6] drives them from the land and makes them small; [7] his hand every day a half-measure of corn measures out (in requital).

The writing (of this tablet is) as above, (beginning;) "every dawn, an oath." Seventh tablet (of the series which begins:) "to be with him."

(Copy) belonging to Assyria, like its old (text is) it written and engraved. The country of Assur-bani-pal (Sardanapalus), the mighty King, King of Assyria.

[1] In the Assyrian version "he recognises his pledge to him."
[2] In the Assyrian version "they humble him."
[3] In the Assyrian version "they expel him."
[4] In the Assyrian version "saws asunder and kills."
[5] In the Assyrian version "a slave."
[6] In the Assyrian version "beats."
[7] In the Assyrian version "makes ill."

Chapter XIV

THE CODE OF HAMMURABI[1]

1

If a man make a false accusation against a man, putting a ban upon him, and can not prove it, then the accuser shall be put to death.

[1] [Reprinted with the permission of the Methodist Book Concern from "The Codes of Hammurabi and Moses (with copious comments, index, and Bible references)" by W. W. Davies, Ph. D., Professor of Hebrew in the Ohio Wesleyan University.

The following account of this code (by Professor Wigmore) is reprinted from "Northwestern University Bulletin," Vol. XIV, No. 25 (March 6th, 1914)]:

The Law School has recently acquired, for the Elbert H. Gary Library of Law, a cast, in facsimile, of the Code of Hammurabi, the oldest law-code in the world. The original is a pillar of dark stone, some eight feet high and two feet across, and now stands in the Museum of the Louvre, in Paris. It was discovered in 1902 at Susa, near the Persian gulf, by a French archaeological expedition under M. de Morgan.

The Code is inscribed on the obverse and reverse of the pillar, in columns of cuneiform characters. It forms some 282 sections in all.

Its somber appearance, its massive dimensions, and the sentiment of its tremendous antiquity make it a profoundly impressive object.

Immediately on its discovery the scientific world was agitated by its possibilities of renewed revelation for the sciences of archaeology, sacred history, and legal evolution. Translations were soon published in German, English, French, and Italian, and the discussion of its various aspects continues unabated.

Its first special interest lies, of course, in the fact that it is the oldest known code of laws. The simple Twelve Tables of Roman law date only about 300 B.C.; the lost codes of Solon, Draco, and Lycurgus go no further back than 800 or 900 B.C.; the Hindu code of Manu and the early Chinese code no further than 1000 B.C.; and the Hebrew legislation is not earlier than 700 B.C. This code of Hammurabi is known to date from 2270 B.C. or thereabouts. [Semitic scholars differ, by a century or two, upon the date.]

Another feature of interest is that it represents the law of probably the most advanced of ancient civilizations — Babylonia. At the time when we first meet these nations in history, their laws are in a primitive stage (relatively speaking). This is true of the Jews, the Arabs, the Hindus, the Chinese, and the Germanic and Celtic stocks. Even the Romans, at the time of the Twelve Tables (about 300 B.C.) were still primitive. Only Egypt can be compared with Babylon. But Babylon had already outstripped Egypt, at the time of Hammurabi, in the development of commerce and commercial law.

The most valuable service of this Code is its explicit revelation of the legal principles which mark its type of legal system. A people's code or

Johns renders the first clause: "If a man weave a spell;" Harper renders the second clause, "and charge him with a [capital] crime." There can be, however, little doubt but that this law was directed against witchcraft or magic.

The Hebrews legislated as follows:

> Thou shalt not suffer a sorceress to live. (Ex. 22: 18).

system of law is not a mere fiat. It is a part of the legal life and consciousness of a people. Hence it represents a stage of their legal growth. Each people or nation has had its own growth and represents some type. Just as a buffalo or a dinosaur or a pterodactyl or a whale has a set of bones and organs forming a genus or species, and just as the study of a complete animal of any species enables us to determine its type, and thus to compare the growth and relations of specific organs in other genera or species, so, in the study of comparative law, the typical legal ideas are found to have a different or similar growth and relation in different peoples. And the discovery of a fairly complete legal system in Babylon, at so ancient a period, enables us to extend our knowledge of the growth and relations of the chief legal ideas recurrent among all peoples.

A glance at some of the provisions of the Code of Hammurabi will illustrate this and will prevent us from looking upon it merely as an antiquarian curiosity or a collection of odd-sounding rules.

Some of its provisions point to a still very primitive legal system — *e.g.*, it preserves the retaliatory penalties — an eye for an eye, a tooth for a tooth. It also preserves liability for accidental harm, which marks all primitive systems.

Others of its provisions show a semi-advanced condition, *e.g.*, personal revenge, the family feud, has disappeared, and all justice is administered by the State. For many wrongs fixed sums are payable as damages. The liability of the family or children for the parents' offenses is inherited in only two or three instances. The debtor's liability is still personal; his property is not yet liable separately.

Finally, some of the provisions show the Babylonians in a stage the most advanced of all civilizations prior to that of Rome under the emperors; *e.g.*, aliens are not subjected to discrimination in commercial or other rights. Land is held by individual ownership, not in common. Trade and commerce are complex; there are rules for warehousing, for agency and partnership, for various kinds of contracts; and all contracts must be reduced to writing. In one notable respect there is here a backwardness; for the protection given to an innocent purchaser (market overt, purchase for value without notice) is incomplete.

In family and succession law we note that at Babylon marriage is a developed type of marriage by purchase, with a dowry from the wife's father; that there is no primogeniture (only a double share to the eldest son); that daughters do not inherit if there are sons; and that there is no marked trace of either endogamy or exogamy (*i.e.*, marriage limited to women within or without the clan).

All of these features, found in this particular combination, are of the highest interest. No other legal system, it may be said, possesses just this combination at a given time. Thus the study of the Babylonian system will throw new light on the stages and forms of growth of each of these separate legal principles, as well as on the possibilities of their combination with each other in the law of a given people.

In the science of comparative legal history (which is as yet in its infancy), Babylon and Egypt appear as the two great peoples of the pre-Christian era. They far surpass the others in the fertility of their legal ideas and in their utility for our edification. Thus far, and until the possible discovery of some corresponding code in Egypt, the Code of King Hammurabi places Babylon in the forefront of modern scientific interest.

And also:

A man or a woman that hath a familiar spirit, or that is a wizard, shall surely be put to death; they shall stone them with stones. (Lev. 20: 27. See also Lev. 19: 26–31.)

The fact that the code opens with laws against magic or sorcery seems to prove the prevalence of such practices among the early Babylonians, and the severity of the penalty is a clear proof that the people were superstitiously afraid of those who practiced magic.

2

If a man charge a man of being a sorcerer, and is unable to sustain such a charge, the one who is accused shall go to the river, he shall plunge himself into the river, and if he sink into the river, his accuser shall take his house. If, however, the river show forth the innocence of this man, and he escape unhurt, then he who accused him of sorcery, shall be put to death, while he who plunged into the river shall appropriate the house of his accuser.

It will be noticed that the Babylonians employed ordeals to test the guilt or innocence of persons suspected of, or charged with, sorcery, and also in connection with women charged with marital infidelity. Such tests or ordeals in some form or another have been common to most nations, even down to comparatively recent times. They are still employed in Bible lands. We have all heard of the ordeal by fire, and also by water, which were practiced in England in the Dark Ages. It is not recorded that the Hebrews did at any time in their history plunge suspected parties into the water, but the same principle is illustrated in the so-called "waters of jealousy," so fully described in Num. 5: 11–31, where we read that any woman suspected of infidelity to her husband had to drink a large quantity of water prepared in a certain manner. It is possible that the Hebrews employed other forms of ordeal. The name En-Mishpat, "well of judgment," may have originated from such a practice. See also Psa. 109: 18; Prov. 6: 27–29.

It is remarkable that the victim, and not the sorcerer, was to plunge into the water. The principle, of course, is the same, for the sacred water will save and protect the innocent.

3

If a man (in a case pending judgment) threaten the witnesses, or do not establish that which he has testified, if that case be a case involving life, that man shall be put to death.

The corresponding law in the Mosaic Code is:

If an unrighteous witness rise up against any man to testify against him of wrong doing; then both the men, between whom the controversy is, shall stand before the LORD, before the priests and the judges who shall be in those days; and the judges shall make diligent inquisition; and, behold, if the witness be a false

witness and hath testified falsely against his brother; then shall ye do unto him, as he had thought to do unto his brother. (Deut. 19: 16–19.)

4

If a man offer as a bribe grain or money to witnesses, he himself shall bear the sentence of the court in that case.

We read in Ex. 23: 8:

And thou shalt take no gift; for a gift blindeth them that have sight, and perverteth the word of the righteous.

5

If a judge pass judgment, render a decision, deliver a verdict, signed and sealed, and afterwards alter his judgment which he has rendered, he shall be called to account for the alteration of the judgment, and he shall pay twelve-fold the penalty which was in the said judgment; and, in the assembly, they shall expel him from his judgment seat, and he shall not return, and he shall no more take his seat with the judges in a case.

This particular law finds no exact parallel in Hebrew legislation, though bribery and unfairness in legal proceedings are constantly condemned throughout the historical and prophetical books. Indeed, the frequency with which bribery and perversions of justice are mentioned prove very clearly that rulers and those in power were much addicted to corrupt practices. (See Ex. 23: 6–8; 1 Sam. 8: 3; 12: 3; Isa. 1: 23; Ezek. 22: 12; Amos 5: 12.)

6

If a man steal the property of a temple, or [royal] palace, that man shall be put to death, and so, too, he who may receive from his hand stolen goods shall be put to death.

We have no record in the Old Testament that the death penalty was inflicted for mere theft, unless in such cases as that of Achan (Josh. 7: 25), where the theft was really from God; for the things taken by Achan were "devoted" to God. Passages like Gen. 31: 32, and 44: 9, leave us to infer that in patriarchal times those guilty of stealing sacred things were subjected to the death penalty. The purloining of Laban's gods might be regarded in the same light as the robbing of a temple; and as Joseph acted in the capacity of vice-general, the stealing of his cup was a crime against the palace or Egyptian court, therefore worthy of the severest penalty. See Ex. 22: 2, where a thief is killed at night while breaking into a house.

7

If a man buy silver, gold, slave, male or female, ox, sheep, ass, or anything whatsoever from the son or slave of any person, with-

out witness or contract, or receive the same on deposit, he is regarded as a thief, and shall be put to death.

The object of this law is evident, namely, to prevent underhanded buying and selling by or from irresponsible children and faithless slaves or those unaccustomed to business. Attention may be called to the business-like proceedings in the case of Boaz and Ruth. (See Ruth 4 : 2 ff.) Boaz appears at the gate, the usual place for transacting legal business, where he meets the other kinsman of Ruth; then, before the elders of the city of Bethlehem, a contract is drawn up before witnesses.

It seems clear, from the above section, that slaves were competent to act as agents for their masters, but only in the presence of witnesses and when a contract was duly drawn up.

8

If a man steal an ox, or sheep, or ass, or pig, or boat, from a temple or palace, he shall pay thirty-fold; if it be from a freeman, he shall pay tenfold. If the thief has nothing with which to pay, he shall be put to death.

Notice the grades of punishment. Objects contributed for the support of a temple were held as very sacred, and as the king was God's immediate representative here on earth, his property, too, was regarded as sacred. There was a wide range in the Babylonian laws of restitution in cases of theft, anywhere from thirty to two. (See 124 and 126.) According to Hebrew laws and customs it ranged from seven (Prov. 6 : 1) to two (Ex. 22 : 1). The Hebrew law reads thus:

If a man shall steal an ox or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep. . . . If the theft be found in his hand alive, whether it be ox, or ass, or sheep, he shall pay double. (Ex. 22 : 1 and 4.)

In the time of David, a stolen lamb was to be restored fourfold. (2 Sam. 12 : 6.) This fourfold restoration was in vogue in the time of our Savior (Luke 19 : 8), and prevails to this day among the Bedouin of the desert.

9

If a man who has lost any article find it in the hands of another; and the man with whom the lost article is found say, "A merchant sold it to me in the presence of witnesses," and the owner of the article say, "I can produce witnesses who know my lost property," then shall the buyer bring the merchant who sold it to him, and the witness before whom it was purchased, and the owner shall bring witnesses who know the lost property. The judge shall examine their evidence before God [*i.e.*, in open court], and both of the witnesses before whom the price was paid, and of the witnesses who identify the lost article. [If] the merchant is then proven to be a thief, he shall be put to death. The owner of the lost article

receives his property, the buyer shall recover the money he paid for the same from the estate of the seller.

10

If the buyer can not produce the one who sold it and the witnesses before whom he bought the article, but its owner bring witnesses who identify it, then the buyer is put to death as the thief, and the owner of the lost article shall take back his property.

11

If the owner [claimant, H.] of the lost article do not produce witnesses to identify said article, he is malevolent and guilty of fraud; he shall be put to death.

See remarks under Section 3.

12

If the seller have died, the buyer shall recover from the estate of the seller fivefold damages.

The Hebrews, too, had their laws concerning lost property and articles found. They are fully stated in both Exodus and Leviticus. This is from the Book of the Covenant:

For every matter of trespass [violation of property rights, especially theft], whether it be for ox, for ass, for sheep, for raiment, or for any manner of lost thing, whereof one saith, This is it; the cause of both parties shall come before God [to open trial], he whom God [the judges] condemns shall pay double unto his neighbor. (Ex. 22:9.)

We further read in Lev. 6:2–5:

If any one sin, and commit a trespass against the LORD, and deal falsely with his neighbor in a matter of deposit, or of bargain [pledge], or of robbery, or have oppressed his neighbor; or have found that which was lost, and deal falsely therein, and swear to a lie; in any of all these that a man doeth, sinning therein: then it shall be, if he hath sinned, and is guilty, that he shall restore that which he took by robbery, or the thing which he hath gotten by oppression, or the deposit which was committed to him, or the lost thing which he hath found, or anything about which he hath sworn falsely; he shall even restore it in full, and shall add the fifth part more thereto: unto

him to whom it appertaineth shall he give it, in the day of his being found guilty.

Indeed, the Hebrew law went still farther, for it was directly commanded that those finding strayed animals, or lost articles of any kind, should make diligent effort to find the owner so as to restore to him that which had been lost.

13

If the witnesses of that man be not at hand, the judge shall put off the case for six months; and if then he do not produce his witnesses within these six months, that man is malevolent, he himself shall bear the penalty in that case.

The reader will at once perceive that the laws of Hammurabi which pertained to theft were much harsher than those of the Hebrews. This is natural, for they point to a more developed commercial and business system than that which obtained in Israel. Not only was theft of a certain kind punishable with death, but the receiver of stolen goods was subject to the same penalty as the thief himself.

14

If a man steal the minor son of a freeman, he shall be put to death.

Kidnaping was a capital offense in Israel too. The law reads:

And he that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death. (Ex. 21 : 16.)

In Deuteronomy the law seems to be confined to the stealing of Israelitish children, as it was in Babylonia to freemen, which goes to show that the Hebrews made a distinction between kidnaping from Israelites and foreigners. We read:

If a man be found stealing any of his brethren of the children of Israel, and he deal with him as a slave, or sell him, then that thief shall die. (Deut. 24 : 7.)

15

If any man take a male or female slave of the [royal] palace, or the male or female slave of a freeman outside the gates of the city, he shall be put to death.

16

If a man conceal in his house a male or female slave, a fugitive from the palace, or from a freeman, and do not produce the same at the order of the officer, the master of that house shall be put to death.

The Babylonian law made it exceedingly difficult to harbor or aid in any way runaway slaves. It will be noticed that the extreme penalty of the law was inflicted in all cases, regardless of the fact as to whether the slave was that of the king or of some ordinary citizen. Such laws made the condition of those in slavery extremely hard. In Israel, on the other hand, the provisions of the laws relating to fugitive slaves were very mild. To recover or capture a Hebrew slave was a difficult task; the owner of such a slave would therefore, in the nature of things, endeavor to make his lot tolerable. Here is the Deuteronomic law:

Thou shalt not deliver unto his master a servant which is escaped from his master unto thee; he shall dwell with thee, in the midst of thee, in the place which he shall choose, within one of thy gates, where it liketh him best: thou shalt not oppress him. (Deut. 23:15, 16.)

It may be observed that the phrase "in the midst of thee," signifies anywhere in Israel. Many think that this law was enacted for foreigners or non-Israelites, for they argue that, according to Lev. 25:39, a Hebrew is not to be made a bond-servant, but, at the most, a hired man or day laborer for a limited time. We read:

Of the nations that are round about you, of them shall ye buy bondmen and bondmaids. (Lev. 25:14.)

17

If a man find a fugitive slave, male or female, in the open country, and brings the same to the owner, the owner of said slave shall pay that man two shekels of silver.

18

If that slave refuse to give the name of his master, he shall be brought to the palace; an inquiry shall be made into his past, and he shall be restored to his owner.

Here again we see another proof of the law favoring the rich rather than the poor, the master rather than the slave; the reward offered for the restoration of a fugitive slave could not but have served as an inducement for the capture of those slaves who had deserted their posts. It is probable that Israel, too, had similar laws. See the account of Shimei and his two fugitive slaves, 1 Kings 2:39 ff.

19

If he forcibly detain that slave in his house, and that slave be caught later in his house, then that man shall be put to death.

This is not a case of harboring a slave, but rather one of theft, or kidnaping. As in the case of concealing stolen goods, the penalty was death. (See Section 6).

20

If a slave escape from the one who has captured him, that man shall swear, by the name of God to the owner of the slave, then he shall be acquitted of all blame.

21

If a man make a breach into a house, one shall kill him in front of the breach, and bury him in it.

This passage is not quite clear, "To make a breach," corresponds, no doubt, to our phrase, "to break into." "To kill in front of the breach," probably means to kill on the spot, without giving the thief any chance whatever to escape; *i.e.*, without ceremony or trial. To bury the culprit in a hole in front of the breach seems to point to a custom of burying burglars, wherever killed. Such a custom was known to the Germans during the Middle Ages. Some have suggested that the belief was indulged in that the dead man's spirit would protect that house from further burglaries.

In Israel, too, the penalty for housebreaking "before the sun be risen" — *i.e.*, at night — was death. This is perfectly natural, for burglars have all the advantage in the darkness of the night; their apprehension is very difficult, and their identification always all but impossible. Moreover, a burglar in case of an effort to capture him, seldom hesitates to resort to extreme measures. The Hebrew law reads thus:

If the thief be found breaking in, and be smitten that he die, there shall be no bloodguiltiness [no charge of murder against the one that killed him] for him. If the sun be risen upon him, there shall be no bloodguiltiness for him. (Ex. 22 : 2, 3.)

22

If a man carried on highway robbery and be captured, he shall be put to death.

23

If the highwayman be not captured, he who has been robbed shall declare before God [under oath in open court], the amount lost; then the place and official in whose territory and district the robbery took place shall compensate him for that which he lost.

24

If it be a life, the place and official shall pay one mina of silver to his people.

This is rather obscure. Winckler renders: "If people are stolen, then shall the community and official pay one silver mina to the relatives." Have we reference here to murder or kidnaping? Cook evidently regards

the first clause as having reference to murder. He says: "The code placed upon the city and the governor the responsibility for brigandage carried on within its limits. . . . And if it was a life, the city and the governor were required to pay one mina of silver to the people of the murdered man." The law has Semitic analogies, and, as Dareste has pointed out, recurs not infrequently in ancient codes. "In Arabia the responsibility for homicide, where the murderer was unknown, was cast, in the first instance, upon the nearest community; but under Islam, blood money in these circumstances, was paid by the state."

The Hebrew law in case the murderer were not known is stated at length in Deut. 21: 1–9, to which the reader is referred, as our space forbids its insertion here.

25

If a fire break out in a man's house, and any one who goes to put out the fire shall lift up his eyes towards the owner's property and take any property [furniture] of the owner of the house, he shall be cast into that same fire.

It is clear, from the wording of this law, that the owner of the house on fire had the right to take the law into his own hands, and punish the thief on the spot, just as in the case of housebreaking at night mentioned in Section 21. We find no parallel to this in the Mosaic Code, nor any reference to such practice anywhere in the Old Testament. It will be admitted, however, that a man mean enough to steal under such circumstances deserved summary punishment.

26

If an officer or man [common soldier] who has been ordered to proceed on the king's business, go not, but hire a substitute whom he sends in his place, that officer or man shall be put to death, his substitute shall take possession of his house.

The contrast between this severe law and that of Deuteronomy in regard to soldiers and army officers is marked. The Hebrew law reads:

When a man taketh a new wife, he shall not go out in the host, neither shall he be charged with any business: he shall be free at home one year. (Deut. 24: 5. See also 20: 5–9.)

It is not quite clear what is meant by the terms *officer* and *man* in this section, nor yet on what business they were dispatched by the king. Some regard the reference to soldiers and officers in time of war, while others maintain that the cultivation of public lands is the subject in question.

We now come to a number of laws (27–41) having reference to what may be called crown-lands, or land held in fee by the State. We know that Israel, too, had such lands at one time or another under the monarchy. It is to this custom that Samuel refers when he says to the delegation which waited upon him to demand a king:

And he will take your fields, and your vineyards, and your olive-yards, even the best of them, and give to his officers and his servants. (1 Sam. 8: 14.)

The words of Jezebel concerning Naboth's vineyard prove clearly that the prophecy of Samuel was not a mere threat. (1 Kings 21 : 7; Ez. 46 : 16–18.)

27

If an officer or a man be captured in the garrison of the king, and subsequently his field and garden have been given to another, and this one take possession; if he [the former owner] return and reach his place, his field and garden shall be restored to him, and he shall take it again.

28

If an officer or a man be captured in the garrison of the king, if his son be able to take charge of his business, the field and the garden shall be given to him, and he shall take his father's field.

29

If his son be a minor, not able to take charge of the business, the third of the field and garden shall be given to his mother, and she shall bring him up.

30

If an officer or a man neglect his field, garden, or house, instead of taking care of them; if another take his field and garden and house and care for them three years; if the owner return and claim his field and garden and house, they shall not be given to him, but he who has taken them and cared for them shall continue to take care of them.

31

If he abandoned them one year, and return, then the field, garden, and house shall be given back to him, and he shall take them again.

32

If an officer or a man be captured on an errand of the king, and a merchant ransom him, and bring him back to his locality; if he have in his house means for his ransom, so shall he ransom himself; if there be no means in his house for his ransom, so shall he be ransomed by the temple of his community; if in the temple of his community there be no means to ransom him, then the palace [the king] shall ransom him. His field, garden, and house shall not be given for his ransom.

33

If either a governor or magistrate have taken to himself the men of the levy, or accepted, and sent on the king's errand, hired substitute, that governor or magistrate shall be put to death.

Winckler maintains that it is an impossibility to get at the exact meaning of the words translated "governor and magistrate" in this or the following section. He thinks, however, that the reference must be to military men of some kind. We have followed Harper.

34

If a governor or a magistrate take the property of an officer, plunder an officer, hire out an officer as slave, or deliver an officer in a lawsuit to a tyrant, take away from an officer a gift given him by the king; that governor or magistrate shall be put to death.

Harper's rendering is nearly the same as the above; but Johns gives the following translation: "If either a governor or magistrate has taken to himself the property of a gauger, has plundered a gauger, has given a gauger to hire, has stolen from a gauger any judgment by high-handedness, has taken to himself the gift the king has given the gauger; that governor or magistrate shall be put to death."

35

If any one buy the cattle or sheep from an officer, which were intrusted to him by the king, he [the buyer] shall forfeit his money.

The property above mentioned belonged evidently to the royal flocks, intrusted to the care of government officials. The Hebrew kings, too, had their royal domains, consisting of vineyards, olive-yards, flocks, herds, etc. (See 1 Chron. 27: 25–31.)

36

The field, garden, or house of an officer, sub-officer [constable], or a tributary [tax-gatherer, H.], may not be sold for money.

37

If a man buy the field, garden, or house of an officer, sub-officer or tributary, the sale is void [the tablet recording the sale shall be broken], and he forfeits his money. The field, house, or garden shall be given back to the owner.

38

An officer, sub-officer, or tributary may not transfer in writing his field, garden, or house to his wife or daughter, nor may he assign them for debt.

The reference in this section is not to property inherited, or even acquired by purchase, but most probably to lands and houses intrusted to a man while filling some government or municipal office; or, as Professor Harper suggests, property "which is his by virtue of his office." If this theory be correct, we may infer that a son might also inherit certain offices.

39

He may, however, transfer in writing a field, garden, or house, which he has acquired by purchase, and possesses, to his wife or daughter, or may assign for debt.

Daughters, according to Hebrew law, too, could, under certain circumstances, inherit the property of their father. See Num. 27: 1–11, where the case of Zelophehad's daughters is discussed.

40

He may sell field, garden, and house to a royal agent [tamkar], or any other State official; the buyer holding field, garden, and house for its usufruct.

This section is obscure. It is probable that the law refers to one public official transferring public properties or benefices to another agent of the State.

Harper's and Johns's translations are essentially different. We reproduce that given by Harper: "A woman, merchant, or other property-holder may sell field, garden, or house. The purchaser shall conduct the business of the field, garden, or house which he has purchased."

Johns has votary — *i.e.*, a temple prostitute — for woman, and foreign-sojourner for property-holder; otherwise he agrees with Harper.

41

If any one fence in the field, garden, or house of an officer, sub-officer, or tributary, and furnish the fencing material therefor, when the officer, sub-officer, or tributary return to the field, garden, and house, the fencing material becomes his property.

The translations of both Johns and Harper differ widely from the above, though agreeing very closely with one another. Johns renders thus: "If a man has bartered for a field, garden, or house of a gauger, constable, or tributary, and has given exchanges, the gauger, constable, or tributary shall return to his field, garden, or house, and shall keep the exchanges given him."

42

If a man rent a field for tilling and raise no crops; then he shall be called to account for not having cultivated the field, and [if convicted] he shall deliver grain to the owner of the field, in proportion to the yield of the adjacent fields.

This law is eminently just, for instead of fining the neglecter any fixed sum, he simply has to pay the amount for which he is justly responsible. That is, the fine is based upon the yield in near-by fields that same year. This law finds an exact parallel in Hebrew legislation, though the following more than covers it:

Thou shalt not oppress an hired servant that is poor and needy; whether he be of thy brethren or of thy strangers that are within thy gates. (Deut. 24: 14.)

43

If he do not till the field, but neglect it, he must give grain to the owner of the field to the same amount that his neighbor produced; and the field which he has not tilled, he must plow and harrow and give back to the owner of the field.

44

If a man rent for three years a piece of waste land to make it productive, but is too lazy to till it, so as to make it arable, in the fourth year he must plow it, harrow it, and till it, and give it back to the owner, and for each year he must measure out ten GUR of grain for each ten GAN.

A GAN was about 6⅔ acres, and a GUR a little more than eight bushels.

45

If a man let his field to another for a fixed rent, and has received the rent for the field, but storms come and destroy the crops, the loss falls upon the renter.

This law is eminently unjust, and proves clearly that the rich man had advantage over the poor, and yet the same custom prevails to-day in our own land.

46

But if he have not received a fixed rent for his field, but has let it out for one-half or one-third [of the crop], so the grain on the field shall be divided proportionately between the renter and the owner of the field.

47

If the renter, because in the first year he did not gain sustenance, has given the field into the charge of another, the owner shall not object; the field has been cultivated, and he shall take his share of the grain according to the contract.

This section is not free from obscurity. Johns renders the first part, "If the cultivator, because in the former year he did not set up his dwelling;" and Scheil, "because he did not go to his farm."

48

If any owe a debt on which he pays interest, and a storm devastate his field and destroy the grain, or, owing to a scarcity of water, the grain have not grown in the field; in that year he need not give any grain to the creditor; he shall moisten his contract tablet in water, and need pay no interest this year.

To moisten the tablet in water was symbolical. We learn from Section 37 that tablets were also destroyed.

49

If a man have taken money from a merchant, and have given [as security] the merchant an arable field, to be planted in grain or sesame, and have said to him, Plant grain or sesame in the field and take the crop; if the cultivator produce grain or sesame in the field, then at the harvest the grain or sesame that the field has produced shall be the property of the owner of the field, and he shall pay grain for the money he received from the merchant, and for the interest and for the support of the renter.

We know, from other inscriptions, that interest, amounting to what would now be regarded as usury, was charged in ancient Babylonia. The rate, as a rule, was $11\frac{1}{3}$ or $13\frac{1}{3}$ per cent., though some tablets record interest at 20 per cent. Interest was often paid in money, but quite commonly in grain, fruit, or vegetables. The contracting of debt was regarded by the Hebrew law as a misfortune; consequently those having anything to lend were exhorted to be generous. We read:

If thou lend money to any of my people with thee that is poor, thou shalt not be to him as a creditor; neither shall ye lay upon him usury. (Ex. 22:25.)

It must be noticed, however, that the Hebrews made a distinction between a native Israelite and a foreigner, in money-lending matters; for we further read:

Thou shalt not lend on usury to thy brother, usury of money, usury of victuals, usury of anything that is lent on usury; unto a

foreigner thou mayest lend upon usury, but unto thy brother thou shalt not lend on usury. (Deut. 23 : 19, 20.)

The reader must bear in mind that the word usury is employed here, as everywhere in the Old Testament, as the exact synonym of interest, and therefore should never be regarded as an excessive rate of interest. Driver observes, very justly, that Hebrew legislation, in condemning interest on anything lent, agrees perfectly with the thinkers of Greece and Rome, as well as those of the early Christian Church. The fact, however, is, that it was very uncommon in ancient times to borrow money simply for the sake of speculation, or mere investment in some business project. A clear-cut distinction should be made between the ancient charitable loan and the modern commercial loan. Our Savior, though acquainted with purely commercial loans, did not speak in unmeasured terms of condemnation. (See Matt. 25 : 27 ff.) Nor must we think that it was ever a general practice among the Jews to receive no interest, accept no pledges, or demand no security. Indeed, we know that debtors were sold (for a limited period) as slaves. (See 2 Kings 4 : 1 ; Neh. 5 : 5, 6 ; Isa. 50 : 1.) The seventh year, the so-called year of release, is known to us all. (See Deut. 15 : 1–6 ; and Ex. 21 : 2.)

50

If the field of grain or the field of sesame were already planted when he gave it [as security], the grain or sesame in that field shall belong to the owner of that field, and he shall return the money with interest to the merchant.

51

If he have no money to pay back, he shall give the merchant grain or sesame according to the current price for the money, and also interest according to the royal tariff [*i.e.*, the sum legally fixed by the authorities].

52

If the renter have not planted grain or sesame in the field, his [the debtor's] contract is not annulled.

Harper has, "do not secure a crop," instead of "have not planted." The above laws seem exceedingly fair. Poor crops resulting from natural causes excused the poor man or renter from part of the rental ; but carelessness or indolence were treated with no leniency.

The next four laws concern dams, dykes, or canals. In the very nature of the case, the hills of Palestine exclude the necessity for legislation suitable only to level or low lands, such as Mesopotamia. Babylonia was almost as dependent upon its canals as is Holland to-day. They needed constant care and repairing. Those living alongside of them were held responsible for any damage which might result from a breach. The severity of the law, as we shall see, for neglecting them, is a certain proof of the damage caused by inundations.

53

If any one neglect to keep his dyke in proper condition and do not strengthen his dyke, and if a breach take place, and the meadow-land be inundated by the water, the man in whose dyke the breach has taken place, shall pay back for the grain which was thereby destroyed.

54

If he be unable to replace the grain, he shall be sold, and also his property for money, and the farmers whose grain the waters destroyed shall share the proceeds.

55

If a man have opened his trenches for irrigation in such a careless way as to overflow his neighbor's field, he shall pay his neighbor in grain [the amount being based on the adjoining fields].

56

If a man let in the water and the water carry off the crop of the adjoining field, he shall measure ten GUR of grain for every ten GAN of land.

As already said, the Hebrews had no legislation concerning canals or dykes. They did, however, recognize damages arising from neglect. Thus when a cistern or pit was not properly covered, the owner of the same was to make good the loss arising from the neglect. (Ex. 21 : 33.) So also in the case of fire. The law reads :

If fire break out, and catch in thorns, so that the shocks of corn, or the standing corn in the field, be consumed ; he that kindled the fire shall surely make restitution. (Ex. 22 : 6.)

57

If a shepherd, without the consent or permission of the owner of a field, have pastured his sheep upon the growing grain ; the owner shall reap his field, and the shepherd, who without his permission has pastured his flock in the field, shall pay in addition [as damage] twenty GUR of grain for every ten GAN.

The Hebrew law presents the following parallel :

If a man shall cause a field or a vineyard to be eaten, and shall let his beast loose, and if it feed in another man's field ; of the best

of his own field and of the best of his vineyard shall he make restitution. (Ex. 22 : 5.)

58

If after the sheep have left the meadow, and have been shut up in the common fold at the city gate, the shepherd turn the sheep into the field, to pasture the sheep on the field; the shepherd shall take the field which he has suffered to be grazed, and besides he shall pay the owner sixty GUR of grain for every ten GAN.

The translations of both Johns and Harper differ a little from the above. That of Johns reads thus: "If from the time that the sheep have gone up from the meadow, and the whole flock has passed through the gate, the shepherd has laid his sheep on the field and has caused the sheep to feed off the field, the shepherd who has made them feed off the field one shall watch, and at harvest time he shall measure out sixty GUR of corn per GAN to the owner of the field."

The reader will have doubtless observed the above law is very obscure. It probably refers to a shepherd who turned his flock into the field of his neighbor at night.

59

If a man without the knowledge of the owner of an orchard cut down a tree in that orchard, he shall pay one-half mina of silver.

It may be inferred, from Ex. 22 : 5 f., that trees could not be wantonly destroyed. This was unlawful even in the time of war or during a siege. (See Deut. 20 : 19 f.)

60

If a man have given a field to a gardener to plant as an orchard, and this one care for it, he shall care for the orchard four years; in the fifth year the owner of the land and the gardener shall share equally; the owner of the orchard shall take his part.

We have the following parallel in Hebrew legislation; though not exact, it has much in common:

And when ye shall come into the land, and shall have planted all manner of trees for food, then ye shall count the food thereof as uncircumcision; three years shall they be as uncircumcision unto you; it shall not be eaten. But in the fourth year all the fruit thereof shall be holy for giving praise unto the LORD. And in the fifth year ye shall eat of the fruit thereof, that it may yield unto you the increase thereof. (Lev. 19 : 23–25.)

The general meaning of both laws is clear: The first three years produced little or no fruit; in the fourth year, according to Hebrew law, Jehovah was to receive a portion. (See Deut. 26 : 2.) From the fourth year on, the owner was to receive his full portion, the tenth of course excepted.

61

If the gardener have not planted the entire field, but have left a part waste, this part shall be included in his share.

That is, the gardener is held responsible for his negligence, and the amount which the neglected part of the field might have produced is deducted from his share when the division is made.

62

If he have not planted as orchard the field which was given him, if it be arable land [suitable for grain] the gardener shall pay the owner produce for the years he left it uncultivated proportionate to the yield in the adjoining fields, [and] he shall put the field in an arable condition and give it back to the owner of the field.

63

If the field be unreclaimed land, he shall do the ordered work on the field, and give it back to the owner of the field, and measure out ten GUR of grain for each ten GAN, for every year.

64

If a man give his orchard to a gardener for cultivation, the gardener shall, as long as he has the orchard, give the owner two-thirds of the produce of the orchard, and retain one-third for himself.

65

If the gardener do not take proper care of the orchard, and the produce fall short, he shall, nevertheless, measure out the yield of the orchard, according as [things have grown in] the neighbor's [garden].

Here, as we have already observed in the introduction, we find that five columns or rows of the text have been erased. This was without doubt the work of some conqueror in later ages, who by inscribing his name, titles, etc., desired to perpetuate his own glory and renown. Why the space was not filled up, but left blank, can only be a matter of conjecture; nor can we form any idea of who the king or general might have been who perpetrated this piece of vandalism. What is still worse, we can form no correct idea of the nature of the laws thus erased. Père Scheil — and most other translators agree — thinks that no less than thirty-five laws were erased. This accounts for our passing from the sixty-fifth to the hundredth section. From Hammurabi tablets, found in the library of Assurbanipal, it has been inferred that the following might have formed a part of the erased portion. We give them as translated by Johns:

A. If a man has taken money from a merchant, and has given a plantation of dates to the merchant, has said to him, The dates that are in my plantation take for thy money; that merchant shall not agree, the dates that are in the plantation the owner of the plantation shall take, and he shall answer to the merchant for the money and its interest according to the tenor of his bond. The dates that are over, which are in the plantation, the owner of the plantation shall take foorsooth.

B. . . . the man dwelling (in the house) has given to the owner (of the house) the money of its rent in full for the year, the owner of the house has ordered the dweller to go out when his days are not full, the owner of the house, because he has ordered the dweller to leave when his days are not full, (shall give) of the money which the dweller gave him. . . .

C. If a man has to pay, in money or corn, but has not money or corn to pay with, but has goods, whatever is in his hands, before witnesses, according to what he has brought, he shall give to his merchant. The merchant shall not object; he shall receive it.

We now resume the Hammurabi Code. Whether A. B. C. are a part of the original code or whether they have any relation to it, is a question which with our present *data* can not be answered.

100

. . . interest for the money as much as received, he shall give his note for it, and on the day agreed upon he shall pay the merchant.

It is generally agreed that the above and the few next following sections refer to merchants and clerks in their employ, especially to traveling salesmen, or those transacting business at a distance.

101

If there be no business openings in those places to which he has gone [*i.e.*, if unsuccessful], the agent shall leave intact the money which he received, and give it back to the merchant.

Harper has, instead of "shall leave intact the money," "shall double the amount of money."

102

If a merchant have given money for investment to an agent, and the latter suffer loss in the place whither he went, he shall return the principal in full to the merchant.

Both Harper and Johns have "as a favor," instead of "for investment."

103

If, while on a journey, an enemy rob a man [*i.e.*, agent] of anything which he may have, the agent shall take an oath [by the name of God], and shall be acquitted.

104

If a merchant have given an agent grain, wool, oil, or any other goods for trading purposes, the agent shall give in writing a receipt [make an invoice] for the amount and give to the merchant. Then he shall receive a receipt from the merchant for the money paid the merchant.

Johns's rendering of the last clause is as follows: "The agent shall take a sealed memorandum of the price which he shall give to the merchant." Harper's rendering is virtually the same.

105

If an agent have neglected to take a receipt for the money he gave the merchant, he may not place the money for which he has no receipt to his own account.

106

If an agent obtain money from a merchant and dispute it with the merchant, the latter shall charge the agent before God and witnesses [in open court] with having the money. Then [in case of conviction] the agent shall pay three times the amount given him.

107

If a merchant have cheated the agent, and the agent have returned already all which the merchant had given him, but the merchant deny having received what was returned to him, then the agent shall accuse the merchant before God and witnesses. The merchant because he denied having received all that he had received, shall pay the agent six times the amount.

108

If a [female] tavern-keeper do not accept grain according to gross weight as pay for drinks, but take silver; and the price of the drink as compared with that of the grain is less, she shall be convicted and thrown into the water.

Harper's rendering of the second clause is: "or make the measure for drink smaller than the measure for corn." The meaning of this law is not quite clear; but the severity of the penalty shows clearly that the tavern-keeper took great advantage of her customer.

Execution by throwing into the water — that is, by drowning — was very common in Babylonia. (See 129, 133, 143, 155, etc.) Taverns or saloons were kept by women. Compare the case of Rahab, the harlot. (Josh. 2:1 ff.)

109

If conspirators assemble in the house of a tavern-keeper, who are not captured and delivered to the court, that tavern-keeper shall be put to death.

110

If a votary open a tavern, or enter a tavern for the purpose of drinking, that woman shall be burnt to death.

Burning to death was a mode of punishment practiced in Israel, too, for certain crimes: for incest (Lev. 20:14), and for unchastity in the daughter of a priest. (Lev. 21:9.)

The word rendered *votary* probably signifies a woman.

111

If a female tavern-keeper give 60 KA of USA-KANI for drink, she shall receive 50 KA of grain at harvest.

This section is obscure. Usa-kani was the name of a well-known drink at the time when this law was made. Johns renders usa-kani, best beer.

[KA = one liter, or about 990 grains.]

112

If any one on a journey intrust silver, gold, precious stone, or any treasure of his hand, to a man for transportation, if this man [the carrier] do not bring all that was to be transported to the appointed place, but appropriates them, then this man who did not deliver the goods intrusted to him shall be called to account, and he shall pay the owner of the goods to be transported, fivefold, for all that intrusted to him.

The above law refers to goods intrusted to persons traveling, as common carriers. There is no exact parallel in Hebrew legislation, though the following seems to cover the same ground:

If any one sin and commit a trespass against the LORD, and deal falsely with his neighbor in a matter of deposit, . . . then shall it be, if he has sinned and is guilty, that he shall restore the deposit which was committed to him; . . . he shall even

restore it in full, and shall add the fifth part more thereto. (Lev. 6 : 2–5.)

This restoration was to be followed by a religious ceremony. (Lev. 6 : 6 f.)

113

If any one have a claim for grain or money on another man, and he shall take from the grain-heap or granary without the knowledge of the owner, that man shall be charged before the court with having taken, without the knowledge of the owner, grain from the grain-heap or granary, and he shall restore the grain which he took. He shall forfeit all that was due him [the entire amount of his debt].

114

If a man have no claim for grain or money upon another, and levy a distraint, he shall pay one-third of a mina of silver in each case of distraint.

115

If a man have a claim for grain or money upon another, and levy a distraint, and the man thus seized die a natural death in the house of his distrainer, that case has no penalty.

116

If the one seized die of blows or of bad treatment in the house of his distrainer, the owner of the one seized shall bring the merchant to account; if he be the son of a freeborn man, then the son of the merchant shall be put to death; if he be a slave, he shall pay one-third of a mina of silver, and he [the distrainer] shall forfeit all that he gave as a loan.

Here we have a most literal carrying out of the *lex talionis*, "eye for eye, and tooth for tooth," or rather son for son. We have no evidence that the Hebrew law ever authorized the punishing of a child for the sin of his parent. It is true that children providentially have to suffer physical pain, etc., for the transgression of their parents. (Ex. 20 : 5 and 34 : 7.) They suffer by the "self-acting operation of natural laws." In the providence of God the natural ties uniting a family are such that it is difficult for one member to escape entirely the consequences of another's sins. In ancient times it was not uncommon to punish an entire family for the sins of one member. (See Est. 9 : 13 f.; Dan. 6 : 25; Herodotus III, 119.) The humane law of the Hebrews contrasts well with the above. We read:

The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin. (Deut. 24 : 16.)

117

If a man incur a debt and sell his wife, son, or daughter for money, or bind them out to forced labor, three years shall they work in the house of their taskmaster; in the fourth year they shall be set free.

The Hebrew law is as follows:

If thy brother, an Hebrew man, or an Hebrew woman, be sold unto thee, and serve thee six years: then in the seventh year thou shalt let him go free from thee. (Deut. 15:12. See also Ex. 21:2.)

Though the term of service was longer in Israel than in Babylonia, the end thereof was tempered with abundant mercy, as the following clearly shows:

And when thou lettest him go free from thee, thou shalt not let him go empty: thou shalt furnish him liberally out of thy flock, and out of thy threshing-floor, and out of thy wine-press; as the Lord thy God redeemed thee. (Deut. 15:13 f.)

118

If he bind a male or female slave to forced labor, and the merchant let them out to another for pay, no objections can be made.

119

If a man incur debt, and sell for money a female slave, who has borne him children; the money which the merchant has paid shall be returned by the owner of the slave, and he shall ransom his female slave.

The Hebrew law also favored concubines. The law concerning women taken captives in war and forced to concubinage read thus:

And it shall be if thou have no delight in her, then thou shalt let her go whither she will; but thou shalt not sell her as a slave, because thou hast humbled her. (Deut. 21:14. See also Ex. 21:7–11.)

120

If a man store his grain in the house of another, and some damage happen to the stored grain, or if the owner of the house open the granary and take some of the grain, or dispute concerning the quantity of grain stored in his house; then the owner of the grain shall claim the grain before God [in open court], the owner of the

house shall return the grain [in full double the amount, H.] to the owner of the grain.

For the general law of the Hebrews covering all kinds of deposit, see Ex. 22 : 7–10.

121

If a man store grain in the house of another, he shall pay storage price of one GUR for every KA per year.

122

If a man deposit silver, gold, or anything whatsoever, all that he may deposit he shall show to witnesses, make a contract, and then he shall deposit.

We find no exact parallel in Hebrew legislation. See, however, Lev. 6 : 2–7.

123

If a man deposit anything without witnesses and contract, and they at whose place the deposit was made, deny it, there is no legal redress in that case.

124

If a man deposit silver, gold, or anything whatsoever with another in the presence of witnesses, and the depositary deny it, he shall be brought before the court, and whatever he has denied he shall pay in full [if convicted].

Harper renders the last clause: "he shall double whatever he has disputed, and repay it."

125

If a man deposit any thing, and at the depositary, through burglary or robbery, his property, in common with that of the owner of the place be lost, then the owner of the place, through whose carelessness the loss occurred, must compensate in full the owner of the [stolen] goods. The owner of the place shall follow up and try to recover the lost property, and take it from the thief.

The Hebrew law, as already pointed out, was quite similar. (See Ex. 22 : 7, 8.)

126

If a man, who has not lost anything, say that he has lost something, and puts forth false claims, he shall make known his [pretended]

loss in the presence of God [before a court of law], then he shall be fully compensated for all his alleged loss.

Harper's rendering of the latter part of this law is: "he shall double and pay for the (alleged) loss the amount for which he had made claim."

This law, if the above translation be correct, seems strange and unfair. Nevertheless we must remember that perjury was not as common then as in later ages. To swear was a religious act, a most solemn thing; thus to swear falsely was very risky. All the Semitic people recognized the sacredness of an oath. They superstitiously believed that an oath taken at a holy place, before some divinity, would be speedily and certainly avenged in case of perjury. The custom of swearing or declaring upon oath at a sanctuary in order to declare one's innocence, was known also to Israel. We read in 1 Kings 8 : 31 :

If a man sin against his neighbor, and an oath be laid upon him to cause him to swear before Thine altar in this house; then hear Thou in heaven, and do, and judge Thy servants, condemning the wicked, to bring his way upon his own head; and justifying the righteous, to give to him according to his own righteousness. (See also Ex. 22 : 11.)

127

If a man point his finger at [slander] a votary or at a man's wife, but can not prove his charge, he shall be taken before the judge, and shall be branded on his forehead.

The literal translation of the phrase "branded on his forehead" is "to shear the brow." Cook has the following remark: "The precise nature of the penalty is not clear. It is conceivable that the forelock, the mark of a freedman, was cut off; but the same word is used elsewhere of the branding of slaves."

128

If a man marry a wife, but have made no contract with her, this woman is not a [legal] wife.

The object of this law was perhaps to protect one against a secret marriage.

129

If a man's wife be caught lying with another man, both shall be bound and thrown into the water, unless the husband of that woman desire to pardon his wife, or the king his servant.

The Hebrew law for adultery has much in common with the above. It reads:

And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death. (Lev. 20 : 10.)

The law as given in Deut. 22 : 22, reads:

If a man be found lying with a woman married to an husband, then they shall both of them die.

Though the Hebrew law makes no provision for pardon in any case, by either husband or king, we know that the husband did sometimes pardon his wife. (See Hos. Chap. 1 and 2.)

130

If any one violate the wife [betrothed] of a man, who has not known a man, but who is still living in the house of her father, and he lie with her and be caught, he shall be put to death, but the woman shall go free.

The reference here is, without doubt, to a betrothed maiden violated against her will. The Hebrew law is almost identical. It reads:

But if the man find the damsel that is betrothed in the field, and the man force her, and lie with her: then the man only that lay with her shall die: but unto the damsel they shall do nothing, there is in the damsel no sin worthy of death. (Deut. 22 : 25.)

In case the damsel was not betrothed, her seducer was forced to marry her without the possibility of a divorce, and pay her father a large sum of money as penalty. (See Deut. 22 : 28 f.)

Jeremias thinks that the above section proves that child-marriages were in vogue.

131

If a man have accused his own wife, but she has not been caught lying with another man, she shall swear by the name of God, and then may return to her [father's] house.

In Israel the woman was subjected to an ordeal; and in case the charge against her could not be proved, the husband was fined one hundred shekels, and had to live with his wife. (Deut. 22 : 19. See next section.)

132

If the finger have been pointed against a man's wife [*i.e.*, if she have been suspected], but she have not been caught lying with another man, she shall plunge into the river for her husband's [satisfaction].

This was evidently a case where a woman had fallen, justly or unjustly, into bad repute, when the scandal had become public property. To prove her innocence she must seek the justice of the river-god, whose duty it was to protect the innocent, and punish the guilty, by swallowing them up. The Hebrews, too, had their ordeals, and indeed in cases where women were suspected of infidelity to their husbands, they were forced to drink the so-called waters of bitterness. The Hebrew law is too lengthy to insert in this place, so the reader is referred to Num. 5 : 12–28.

133

If a man be taken captive in war, and there is sustenance in his house, and his wife have left his house and court and have entered the house of another, because that woman has not guarded her body, but entered another's house, she shall be condemned according to law and thrown into the waters.

The punishment is the same as in the case of flagrant adultery. The wife should have awaited the return of her husband, or at least till there was no food in her house.

134

If a man have been taken captive in war, and there be no sustenance in his house, when the wife of this man enter another's house [marry another man]; this woman incurs no penalty.

135

If a man have been taken captive in war, and there be no sustenance in his house, when his wife have entered into the house of another, and have borne children, and if the first husband return later and come to his home, that woman shall return to her first husband, but the children shall follow their father [the second husband].

136

If a man leave his native place and flee away, and his wife subsequently enter into another's house [marry another man], but if then he return and desire to take his wife; because he left his native place and ran away, this wife shall not return to him.

137

If a man have made up his mind to separate from a concubine who has borne him children, or from his wife who has borne him children, then he shall give back to that woman her dowry, and the usufruct of the field, garden, and property, so that she may bring up her children; when she shall have brought up the children she shall have a share equal to that of a son, of all that has been given to her children. She may marry the man of her choice.

The Hebrew law reads:

When a man taketh a wife and marrieth her, it shall be if she find no favor in his eyes, because he has seen some unseemly thing

in her, that he shall write her a bill of divorcement, and give it in her hand, and send her out of his house, and when she is departed out of his house, she may go and be another man's wife. (Deut. 24 : 1 ff.)

From the language of Rachel and Leah (Gen. 31 : 14–16), as Cook observes, it may be legitimately inferred that in Israel, too, it was customary for fathers to give marriage portions to their daughters.

138

If a man put away his wife who has not borne him children, he must give her the amount of the purchase money as much [as he paid her father when he married her], and the dowry which she brought from the house of her father; then he may put her away.

It is not stated what the ground of divorce was in this case, though we may infer that it was the barrenness of the wife. (See under 131.)

139

If there were no purchase money, he shall give her one mina of silver for a divorce.

A mina was one-sixtieth of a talent, or about $30 in our money.

140

If he be a freedman, he shall give her one-third of a mina of silver.

141

If a man's wife, living in his house, has made up her mind to leave that house, and through extravagance run into debt, have wasted her house, and neglected her husband, one may proceed judicially against her; if her husband consent to her divorce, then he may let her go her way. He shall not give her anything for her divorce. If her husband do not consent to her divorce and take another wife; the former wife shall remain in the house as a servant.

142

If a wife quarrel with her husband, and say, Thou shalt not possess me; then the reasons for her prejudices must be examined. If she be without blame, and there be no fault on her part, but her husband have been tramping around, belittling her very much; then this woman shall be blameless, she shall take her dowry and return to the house of her father.

143

If she be not frugal, if she gad about, is extravagant in the house, belittle her husband, they shall throw that woman into the water.

144

If any one take a wife, and this wife give a maid to her husband, and the latter bear children, but this man make up his mind to take another concubine, one shall not countenance him. He may not take a concubine.

Though not clearly stated, the implication is, that the wife mentioned in the above section was childless. Hence her willingness to give her husband a maidservant as concubine. The fact that this concubine had borne children, made it illegal for the husband to take another concubine. The children of a concubine could be regarded as those of a legal wife. There would thus be an added barrier to divorce. Childlessness, occasioned by the barrenness of the wife, has always been regarded in the East, among Semitic people, a sufficient cause for divorce. Keeping this in mind, the words of Leah are easily understood:

And Leah said, God has endowed me with a good dowry, now will my husband dwell with me, because I have borne him six sons. (Gen. 30: 20. See also 29: 34.)

145

If a man take a wife, and she bear him no children, and he make up his mind to take a concubine; if he takes a concubine and bring her to his house, this concubine shall not stand on equality with his wife.

146

If a man take a wife and she give her husband a maid-servant for a wife, and this one bear him children, and then this maid-servant have tried to make herself equal with her mistress, because she has borne children, her mistress may not sell her for money, but may make her a servant, and count her as one of her servants.

The Bible reader will recall the story of Sarah and Hagar, which offers a striking parallel to the above section. Indeed, it is more than probable that Abraham's treatment of Hagar was in strict accordance with the Babylonian law governing such cases. (See Gen. 16: 1 ff., and the case of Rachel, 30: 1 ff.)

147

If she have not borne children, then the mistress may sell her for money.

The Hebrews forbade the selling of a concubine to foreigners.

To sell unto a strange nation, he shall have no power. (Ex. 21 : 8.)

148

If a man take a wife, and sickness attack her, if he then set his face to take a second one, he may; but he shall not put away his wife, whom disease has attacked; on the other hand, she shall dwell in the house he has built, and he shall support her as long as she lives.

149

If this woman be unwilling to dwell in her husband's house, then he must give back to her the dowry which she brought from her father's house, and she may go.

150

If a man give his wife a field, garden, house, or goods, and give her a sealed deed for the same, then, after the death of her husband, her sons can not present claims; the mother may will what she leaves to that one of her sons whom she may prefer, but to the brothers [her other sons] she need not give.

Harper renders the last clause, "but to a brother she may not," and similarly Johns: "to brothers she shall not give." If their translations be the correct one, then the import of the section is, that the estate must be kept in the husband's family, but can not be willed to the wife's relatives. (See Section 171 ff.)

151

If a woman dwelling in the house of a man have contracted with her husband that no creditor of his can arrest her [for his obligations], and has forced from him a contract to this effect, so, if that man had a debt before he had taken this wife, the creditor can not hold the wife for it; and if this woman had a debt before she entered her husband's house, the creditor may not hold the husband responsible.

152

If a debt have been contracted after the woman entered the house of a man [after marriage], both of them are responsible to the merchant.

153

If a man's wife, on account of another, cause the death of her husband, she shall be impaled.

Neither impaling nor hanging was ever practiced in Israel, though impaling was not uncommon in Assyria. It is true that we sometimes read of bodies being hanged or placed upon trees, but this was, without doubt, after the malefactor had been previously put to death. There is no explicit law in Hebrew legislation against a wife murdering her husband, which goes to prove that such a crime must have been exceedingly uncommon, if it ever happened.

154

If a man have known his daughter, he shall be driven from his city [the place he lives in].

155

If a man have betrothed a girl to his son, and his son have known her, but he [the father] afterwards lie with her, and be caught with her, they shall bind him and throw him into the water.

The last clause in the original has *her* and not *him*. This accounts for Johns's correct rendering, "and cast *her* into the waters." The "*her*" is probably a textual error for "him." (See Section 130.) Harper, Winckler, Lagrange, and Scheil substitute "him" for "her" of the text. Notwithstanding the array of authority for substituting "him," one can not resist the temptation to suggest the substitution of "them." As the law now reads nothing is said of the punishment of the woman. The Hebrew law reads thus:

And if a man lie with his daughter-in-law, both of them shall be surely put to death. (Lev. 20: 12.)

The reader shall have noticed also that the Babylonian and Hebrew custom of a father selecting a wife for his son is the same. (See Gen. 24:4; 38:6; and 2 Kings 14:9.)

156

If a man have betrothed a bride to his son, and his son has not known her, but he [the father] afterwards lie with her, he shall pay one-half mina of silver, and return to her all she brought from her father's house. She may marry the man of her choice.

Hebrew legislation offers no exact parallel. We know, however, that the violation of a virgin was a grave offense in Israel. We read in Deut. 22 : 28, 29 :

If a man finds a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found ; then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife, because he hath humbled her.

157

If a man after his father [is dead ?] lie with his mother, one shall burn them both.

Burning to death was a penalty known to Israel, too, as we see from the following :

If a man take a wife and her mother, it is wickedness ; they shall be burnt with fire, both he and they. (Lev. 20 : 14.)

We further read :

And the daughter of any priest, if she profaneth herself by playing the harlot, she profaneth her father ; she shall be burnt with fire. (Lev. 21 : 9.)

This was a horrible mode of punishment, and many commentators, to avoid the severity of such a law, suggest that the burning took place only after death by stoning, as in the case of Achan. (Josh. 7 : 25.)

158

If a man, after his father [is dead], be surprised lying with a wife of his father, who has borne children, he shall be driven out of the house of his father.

This and the preceding sections are very similar. In 157 we have reference to one's own mother, and in 158 to a step-mother, or foster-mother. This is evident from the difference in degree of punishment. It seems that the death penalty was inflicted in Israel for incest, whether with one's own mother or step-mother. The law reads :

The nakedness of thy father, even the nakedness of thy mother, shalt thou not uncover. (Lev. 18 : 7.)

Then again :

The nakedness of thy father's wife shalt thou not uncover. (Lev. 18 : 8.)

The phrase, "to uncover the nakedness" is a Hebraism for to have carnal intercourse. This is clear from Lev. 20 : 11, where we read :

And the man that lieth with his father's wife hath uncovered his father's nakedness : both of them shall be put to death.

The phrase, "to be driven out of his father's house," means about the same as "to be disinherited" in our country.

159

If a man, who has brought a present into his father-in-law's house, and given the dowry, look upon another woman, and say to his father-in-law, "I will not take thy daughter to wife," the father of the maiden shall keep all that he brought him.

The giving of presents to the prospective wife and her relatives is a custom still extensively observed in Oriental lands. We all remember the gifts of Isaac's servant to Rebekah and her people. (Gen. 24 : 53 f.)

160

If a man bring presents into the house of his father-in-law, and give a dowry; if then the girl's father say, "I will not give my daughter to you;" then he shall give back fully all that was given him.

Harper renders the last clause: "he [the father-in-law] shall double the amount which was brought to him, and return it."

161

If a man bring a present into the house of his father-in-law, and give a dowry, and a friend slander him; and his father-in-law say to the young suitor, "You shall not have my daughter;" then he shall give back fully all that was brought to him [double the amount, Harper]; but the friend may not marry his wife.

162

If a man take a wife and she bear him children, and if that woman die, her father may have no claim on her dowry. It belongs to her children.

163

If a man take a wife, and she bear him no children, and if that woman die; if the father-in-law return the dowry which that man brought to his house [house of the father-in-law], the husband has no claim upon the marriage portion of that woman. It belongs to the house of her father.

164

If his father-in-law do not return the dowry, he may deduct the price of the marriage portion from her dowry, and give [the balance of] the dowry to the house of her father.

165

If a man give his son, whom he prefers, a field, garden, or house, and draw up a sealed deed for the same; if afterwards the father die, and the brothers divide [the property] they shall give him the present of his father, and he shall take it; and they shall share equally with him in the paternal possessions [which are left].

Harper renders the second part of this section thus: "He shall take the present which the father gave him, and over and above they shall divide the goods of the father's house equally." Johns virtually agrees with Harper's translation.

Partiality to favorite sons was often shown by Hebrew fathers too. We see this in the history of Jacob (Gen. 48: 19), and of David (1 Kings 1: 11–13); and this, too, in spite of the fact that the law gave the first-born a double portion. (Deut. 21: 15 ff.)

166

If a man take wives for his sons, but not for his minor son, and then die; when the sons divide [the property], they shall give to the minor son, who has not taken a wife, in addition to his share, money for purchase money [to pay the father-in-law], and they shall help him to take a wife.

Notice a similar law for a sister, Section 184.

167

If a man take a wife, who bear him children, and that woman die, and he take a second wife, who bear him children, and then the father die; the children shall not partition the estate according to the mothers; they shall take only the marriage portion of their mothers [the two sets of children shall divide their mother's property], but the goods of their father all share equally.

The above law is perfectly clear and just: The children share equally in paternal property; whereas a mother's dowry can be divided between her own children only, but none of it may be given to step-children.

168

If a man decide to thrust out [disinherit] his son, and say to the judge, "I will thrust out my son;" then the judge shall examine into his reasons, and if the son have no grievous fault, which justifies his being thrust out, the son may not be cut off from sonship.

169

If he have committed a grave fault, which may justify the father in cutting him off from sonship, he shall pardon the first offense; but if he have committed a grave fault the second time, the father may deprive him of sonship.

170

If a man's wife bear him children, or his maid-servant bear him children, and the father during his lifetime say to the children whom his maid-servant has borne him, "My children," and count them with the children of his wife, after the death of the father, the children of his wife and those of his maid-servant shall share equally in the goods of the father's house. The children of the wife have to divide and to choose.

The probable meaning of the last clause is, that the children of the first wife have the first choice in case of dispute, when the final distribution of property is made.

171

If the father during his lifetime have not said to the children, whom the maid-servant has borne him, "My children," after the father dies, the children of the maid-servant shall not share with those of the wife. The maid-servant and her children shall be given their freedom, the children of the wife may have no claim for servitude upon the children of the maid-servant. The wife shall receive her dowry and the marriage portion which her husband gave and deeded her, and she shall remain in the house of her husband as long as she lives, and shall enjoy [the property left her]. She can not sell it for money. What she leaves belongs to her children.

Though a Hebrew father might give gifts to the children of concubines (Gen. 25:6), it seems that they had not the right to any inheritance from the father's estate. (Gen. 24:36; Judg. 11:2.)

172

If her husband have not given her a gift, they shall restore her dowry, and she shall receive from the property of her husband a share equal to that of a son. If her sons worry her, so as to drive her out of the house, then the judge shall inquire into the matter, and if the sons be to blame, the wife shall not leave her husband's house, but if the wife be determined to leave the house, she must leave to her sons the gift which her husband gave her, but the present from her father she may take. She may marry the man of her heart [choice].

173

If that woman bear children to her second husband in the place whither she went, and then die, the former and the later children shall share her dowry.

174

If she bear no children to her second husband, the children of her first husband shall have her dowry.

175

If a slave of the palace, or a slave of a freedman, take to wife the daughter of a freeman and beget children, the master of the slave shall have no claim for service upon the children of this free woman.

It is not always possible in Assyrian any more than in Hebrew to draw a clear-cut distinction between the words rendered slave and servant. There were evidently several grades of slaves among all the Semitic peoples. "The Mosaic law contrasts most favorably with the laws of contemporary nations in its humanity towards slaves." As in Babylonia, so in Israel too, slaves or servants were allowed to marry the daughters of freemen. We read in 1 Chron. 2 : 35, that Sheshan gave his daughter to Jarha his servant to wife. Abraham, too, was pained at the thought of the possibility of having to leave all his property to Eliezer, his chief servant. (Gen. 15 : 2.)

176

If a slave of the palace, or a slave of a freedman, take to wife the daughter of a freeman [gentleman, Johns], and if, when he marries her, she enter the house of the slave of the palace or the slave of a freedman with a dowry from her father's house, and from the time they set up housekeeping and acquire property ; if later on the slave of the palace or the slave of the freedman die, then she who was free-born may receive her dowry, and all which she and her husband had acquired since they were united together shall

be divided into two equal parts; the owner of the slave shall take one part, and the free-born woman shall take the other for her children. If the free-born woman had no dowry, she shall divide into two equal parts all that she and her husband had acquired since their being united together; the owner of the slave shall receive one-half, and the free-born woman shall take the other for her children.

We have the following provision in Hebrew legislation:

If he [a slave] come in by himself, he shall go out by himself; if he be married, then his wife shall go out with him. If his master give him a wife, and she bear him sons or daughters; the wife and her children shall be her master's, and he shall go out by himself. (Ex. 21: 3 f.)

177

If a widow, whose children are minors, desire to enter another house [remarry], she shall not do so without the consent of the judges. If she enter into another house, the judges shall examine into that left by her former husband, and they may give over the house of the former husband to the new husband and that woman, to be managed by them and they [the judges] shall cause them to draw up a contract. They shall keep the house in order, and bring up the children, but may not sell the household goods for money. Whoever may buy the household goods of a widow's children shall forfeit his money, and the goods shall revert to their owners.

178

If [there be] a votary or a sacred prostitute [one connected with some temple] to whom her father has given a dowry and a deed for the same, but have not stated in the deed, which he has drawn up for her, that she may bequeath her estate to whomsoever she please, and have not explicitly granted her full power for disposing of it; if her father die, her brothers shall take her field and her garden, and they shall give her grain, oil, and wool according to the value of her portion, they shall satisfy her. If her brothers do not give her grain, oil, and wool according to the value of her portion, and do not satisfy her, she may give her field and garden to a renter, whom she may select, and this renter shall support her. Field and garden, and all which her father gave her, she shall enjoy as long as she lives. She may not sell or transfer it to any other. What she has inherited belongs to her brothers.

179

If a votary or sacred prostitute, to whom her father has given a dowry and a deed for the same, and has stated in the deed that she may bequeath her estate to whomsoever she please, and have granted her full powers to dispose of it; after her father dies, she may bequeath her estate to whomsoever she please. Her brothers have no claim thereto.

180

If a father do not give his daughter — marriageable or sacred prostitute [therefore unable to marry] — a dowry, and then die, she shall receive from the paternal estate a share like that of a son, to enjoy it as long as she lives. After her [death] it belongs to her brothers.

181

If a father devote a temple-maid or temple-virgin to a god, and give her no dowry, after the death of her father she shall receive from the estate of her father as her share, one-third of a son's portion, to enjoy it as long as she lives. After her it belongs to her brothers.

The exact meaning of the words rendered above temple-maid and temple-virgin is not known. Harper translates the first "devotee" and transliterates the second Nu-par. Johns has, votary, hierodule, or Nu-bar. We have followed Scheil's rendering. The section evidently refers to two different classes of women consecrated to the temple service. (See 110.)

182

If a father do not give his daughter, a votary of Marduk of Babylon, a dowry and a deed for the same, after her father dies she shall receive from her brothers, as her share of the paternal estate, one-third of a son's portion; but she shall not have the management of this. A votary of Marduk may bequeath her estate to whomsoever she please.

183

If a man give his daughter by a concubine a dowry, and give her to a husband, and a written deed [regarding the dowry]; if then the father die, she shall not have a share of her father's estate.

184

If a man give his daughter by a concubine no dowry, and do not give her to a husband; if then the father die, her brothers shall give her a dowry according to the property of her father, and they shall give her a husband.

185

If a man take a child in his name, adopt and rear him as a son, this grown-up son may not be demanded back.

There is no reference in the Hebrew law to immediate adoption, though it is morally certain that where the interests of orphans were so protected as they were in Israel, the practice of adopting children must have obtained. What might be construed as regular adoptions are the cases of Moses by Pharaoh's daughter (Ex. 2:10); Genubath (1 Kings 11:20); and that of Esther by Mordecai (Esth. 2:7). These, however, are all exceptional cases. St. Paul, no less than five times, uses the term adoption in his epistles, to denote the privilege of sonship, bestowed by our Heavenly Father upon His children. It is quite uncertain whether he bases his figure upon Hebrew or Gentile practice. In the absence of data, we may conclude that the Babylonians possessed more legislation concerning adoption than did the Israelites.

186

If a man adopt a child as his son, and after he has taken him, he transgress against his foster-father; that adopted son shall return to the house of his own father.

The above differs from both Johns and Harper. Johns renders the second clause: "when he took him, his father and mother rebelled."

187

The son of a *Ner-se-ga* in the palace service, or the son of a prostitute can not be demanded back.

It is quite uncertain what the term *Ner-se-ga* means, but probably is the appellation given to some officer connected with the royal palace.

188

If an artisan adopt a child and teach him his trade, no one can demand him back.

189

If he have not taught him a trade, the adopted child may return to his father's house.

190

If a man do not treat as one of his own sons the child whom he has adopted as a son and reared, that adopted son may return to his father's house.

191

If a man, who has adopted a son and brought him up, found his own house, and have children after the adoption of the former, and set his face to thrust out the adopted son, that son shall not simply go his way, his foster-father shall give him one-third the share of a son, then he may go. He shall not give him of the field, garden, or house.

192

If the son of a *Ner-se-ga*, or a sacred prostitute, say to a foster father or mother, "Thou art not my father," "Thou art not my mother," one shall cut out his tongue.

193

If the son of a *Ner-se-ga*, or a sacred prostitute, long for his father's house, and run away from his foster-father and foster-mother and go back to his father's house, one shall pluck out his eye.

Instead of "run away," both Harper and Johns have "hate[d] the father that brought him up." The putting out of an eye was not known in Israel as the penalty for violating any law, but rather as retaliation, "eye for an eye." (See Num. 16 : 14; Judg. 16 : 41; 2 Kings 25 : 7.)

194

If a man give his child to a wet nurse, and that child die on her hands, and the wet nurse, without the knowledge of the father and the mother, substitute another child, one shall charge her with having nursed another child, and because she procured another child without the knowledge of father or mother, one shall cut off her breast.

195

If a son strike his father, one shall cut off his hands.

The Hebrew law was still more severe:

He that striketh his father or his mother shall surely be put to death. (Ex. 21 : 15.)

Even the cursing of a parent was punishable with death. (Ex. 21 : 17; Lev. 20 : 9.) So was also disobedience and rebellion. (Deut. 21 : 18 ff.)

196

If a man destroy the eye of another man, one shall destroy his eye.

Here we have precisely the same law as in Israel, the well-known *lex talionis*, common without doubt to all the Semitic peoples.

Thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, strike for strike. (Ex. 21 : 24, 25. See also Lev. 24 : 20; Deut. 19 : 21.)

We see the extension of this famous law in many indirect ways: The tongue guilty of insolence and impudence was cut off (192); the breasts of the nurse who practiced deception were cut, so that she could deceive no more (194); and even the hands of the unsuccessful surgeon were cut off, so that he could do no more damage in his profession (218).

197

If any one break a man's bone, one shall break his bone.

198

If he destroy the eye of a freedman, or break the bones of a freedman, he shall pay one mina of silver.

199

If he destroy the eye of a man's slave, or break the bone of a man's slave, he shall pay one-half his value.

Here again we see that Hebrew legislation contrasted most favorably with that of ancient Babylonia, where the slave was regarded as a mere chattel or piece of property, and not as a man deserving consideration and humane treatment. The reader can not but notice the general tone of kindness in the following Hebrew law:

If a man smite the eye of his servant or the eye of his maid, and destroy it, he shall let him go free for his eye's sake; if he smite out his man servant's tooth, he shall let him go free for his tooth's sake. (Ex. 21 : 26 f.)

Such a law as the above would make the master exceedingly careful in the treatment of his slave.

200

If a man knock out the teeth of a man who is his equal in rank, one shall knock out his teeth.

See above notes under 196.

201

If he knock out the teeth of a freedman, he shall pay one-third mina of silver.

202

If a man strike a man of higher rank than himself, one shall give him sixty strokes with a cowhide whip in public.

It seems that public whipping was practiced in Israel too, as in the case of the husband who falsely accused his wife or betrothed of unchastity. (Deut. 22 : 18.) Some kind of fornication was likewise punished with public whipping. (Lev. 19 : 20.)

203

If a free-born man strikes a man of his own rank, he shall pay one mina of silver.

204

If a freeman strike a freeman, he shall pay ten shekels of silver.

205

If the slave of a freeman strike a freeman, one shall cut off his ear.

206

If one man strike another in a quarrel and wound him, he shall swear, "I did not strike him intentionally," and he shall pay the physician.

There is a great similarity between the above law and the Mosaic legislation on the same subject. The Hebrew law reads:

If men strive together and one smite another with a stone or with his fist, and he die not, but he keepeth his bed, if he rise again and walk about upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time, and shall cause him to be thoroughly healed. (Ex. 21 : 18 f.)

The above section and several of the following ones relate to physicians and the fees paid them. We have no direct parallels in the Hebrew law, though there can be no doubt that Israel, too, had a class of men who practiced the healing art. This is clearly implied from the language of the law quoted above, for the clause, "he shall cause him to be thoroughly healed," can have no other meaning than that the smiter is responsible for the surgeon's bill in full. We read in 2 Chron. 16 : 12, that Asa, who was troubled with some disease of the feet, sought not to Jehovah, but to physicians. Some diseases, like leprosy, were healed by the priest. In our Savior's time physicians must have been numerous. (See Luke 8 : 43.)

207

If the man die of his wounds, he shall likewise swear, and if he [the victim] be a free-born man, he shall pay one-half mina of silver.

The Hebrew law inflicted the extreme penalty, which goes to show the high regard in which human life was held by the Hebrews. The law reads:

He that smiteth a man so that he die, shall surely be put to death. (Ex. 21 : 12.)

208

If he be a freedman, he shall pay one-third mina of silver.

The Hebrew law concerning the killing of servants was as follows:

And if the man smite his servant, or his maid, with a rod, and he die under his hand, he shall surely be punished. (Ex. 21 : 20.)

209

If a man strike a free-born woman, and produce a miscarriage, he shall pay ten shekels of silver for the loss [of that in her womb].

The Hebrews, too, had their law for such a case. It reads:

If men strive, and hurt a woman with child, so that the fruit depart from her, and yet no mischief follow, he shall be surely punished, according as the woman's husband will lay upon him, and he shall pay as the judge determine. (Ex. 21 : 22.)

210

If that woman die, one shall put his daughter to death.

This is an extreme application of the *lex talionis*: daughter for daughter. The Hebrew law also inflicted the death penalty, but not on the innocent child of the perpetrator, but direct on the guilty himself. The Hebrew law reads:

And if any mischief follow, then thou shalt give life for life, etc. (Ex. 21 : 23 f.)

211

If a free-born woman suffer miscarriage on account of having been struck by a man, he shall pay five shekels of silver.

212

If that woman die, he shall pay one-half mina of silver.

213

If a man strike the maid-servant of a freeman, and thus produce a miscarriage, he shall pay two shekels of silver.

214

If that maid-servant die, he shall pay one-third mina of silver.

The reader can not but be impressed with the scale of damages in the above cases, everything depending upon the rank of the woman injured or killed. We notice the same thing in the next few sections, which relate to the pay awarded physicians in successful cases, and the fines imposed when the operations were not successful. (See also 251 ff.)

215

If a physician treat a man for a severe wound with a bronze knife and heal the man, or if he open an abscess [near the eye] with a bronze knife, and save the eye, he shall receive ten shekels of silver.

The exact nature of these operations can only be guessed at. Cook suggests that the word na-gab-ti, translated abscess by both Johns and Harper, should be rendered film; *i.e.*, cataract.

216

If he (the patient) be a freedman, he shall receive five shekels.

217

If it be a man's slave, his owner shall pay the physician two shekels of silver.

218

If a physician treat a man for a severe wound with a bronze knife and kill him, or if he open an abscess [near the eye] and destroy the eye, one shall cut off his hands.

One peculiar offense was punished by the Hebrews, too, by cutting off the hand. (See Deut. 25 : 11 f.)

219

If a physician treat the slave of a freeman for a severe wound with a bronze knife, and kill him, he must replace the slave with another [of course of equal value].

220

If he open an abscess [near the eye] with a bronze knife, and destroy the eye, he shall pay one-half what the slave was worth.

221

If a physician heal the broken limb of a man, or cure his diseased bowels, the patient shall pay five shekels of silver.

The Assyrian word rendered "diseased bowels" in the above section, means, according to Winckler, soft parts of the body as distinguished from bones.

222

If he be a freedman, he shall pay three shekels of silver.

223

If he be a slave, his owner shall pay the physician two shekels of silver.

224

If a cow-doctor or an ass-doctor treat a cow or an ass for a severe wound, and cure the animal, the owner shall pay the doctor one-sixth of a shekel of silver as fee.

225

If he treat a cow or ass for a severe wound, and kill it, he shall pay the owner one-fourth its value.

226

If a brander, without the knowledge of the owner of a slave, brand a slave with the mark of a slave, who can not be sold, the hands of that brander shall be cut off.

Winckler renders *gallabum* barber, or shearer. The Hebrew word *gallab* is also translated barber. It is possible that barbers practiced surgery on a small scale, as they do to this day in Bible lands.

227

If a man deceive a brander and cause him to brand a slave with the mark of a slave who can not be sold, he shall be put to death and buried in his own house, but the brander shall swear, "I did not brand him wittingly;" then he may go free.

228

If a builder build a house for any one and finish it, he shall be paid two shekels of silver for each SAR of surface.

A sar, according to the best authorities, was about eighteen square yards.

229

If a builder build a house for any one and do not build it solid; and the house, which he has built, fall down and kill the owner; one shall put that builder to death.

Hebrew legislation offers no exact parallel, though the following belongs to the same class of laws:

When thou buildest a new house, then shalt thou make a battlement for thy roof, that thou bring not blood upon thy house, if any man fall from thence. (Deut. 22 : 8.)

A prohibition of similar import is found in Ex. 22 : 33 f.

230

If it kill a son of the owner of the house, one shall put to death the son of the builder.

A literal execution of the *lex talionis*, son for son. (See remarks under 116.)

231

If it kill a slave of the owner of the house, he shall give the owner of that house another slave.

232

If it destroy any property, he shall compensate for all that it destroyed, and because he did not build the house solid, and because it fell down, he shall rebuild the house from his own goods [*i.e.*, at his own expense].

233

If a builder build a house for any one, and have not entirely completed the work; if the wall become rickety, the builder shall strengthen that wall at his own expense.

Harper renders the second clause: "and do not make its construction meet the requirements, and a wall fall in."

234

If a boat-builder build a boat of sixty GUR for any one, he shall pay him two shekels of silver as pay.

Johns's rendering is very different: "If a boatman has navigated a ship," etc. A GUR is supposed to have been about five hundred pounds, or a little over eight bushels.

235

If a boat-builder build a boat for a man, and do not make it tight [seaworthy]; if in that same year the boat be sent on a trip, and be damaged, the boat-builder shall rebuild that boat, and make it strong at his own expense, he shall give the reconstructed boat to the owner.

236

If a man let his boat to a boatman, and the boatman act carelessly, and wreck or sink that boat, the boatman shall give the owner of the boat another one as compensation.

237

If a man hire a boatman and his boat and load it with grain, clothing [wool?], oil, dates, or any freight whatever; if that boatman be careless and wreck that boat, and lose the cargo, the boatman, who wrecked that boat and lost the cargo, shall replace the boat, and all the cargo he caused to be lost.

238

If a boatman wreck another man's boat, but refloat it, he shall pay the half of its value in silver.

239

If a man hire a boatman, he shall pay him six GUR of grain per year.

Six GUR would be about fifty bushels. Thus the payment for such services would be about one bushel a week, or at present price of wheat, one dollar, about fifteen cents a day, counting holidays.

240

If a boat run against another boat at anchor and sink it, the owner of the sunken boat shall declare before God [in open court]

the extent of his loss; the owner of the boat which ran down the one at anchor shall make reparation for the boat and all that was lost.

It is impossible to say whether boats of different sizes are intended. It seems, however, from 275 and 276, where the same terms are employed, that one boat was larger than the other. At any rate the hire or rent paid for their use differed quite a little. (See these sections.)

241

If a man take an ox on distraint, he shall pay one-third mina of silver.

Winckler reads: "If a man take an ox for forced labor." The reference is to the custom of mortgaging, or rather of foreclosing a mortgage, for debt. To take a poor man's ox, would be to rob him of the very thing which enabled him to make a living so as to support himself and family. There is a passage in Job which recalls this barbarous custom:

They drive away the ass of the fatherless, they take the widow's ox for a pledge. (Job 24: 3.)

It was forbidden by Hebrew law for a creditor to take the garment of a poor man over night, or to take the little hand-mill which was daily used for grinding corn. (Deut. 24: 6, 12 ff.) The necessity for such legislation becomes evident on reading passages like Job 22: 6; Prov. 22: 27, and Amos 2: 8.

242

If a man hire [an ox] for one year, he shall pay the owner four GUR of grain for a working ox.

243

As pay for an ox of the herd, he shall pay three GUR of grain.

This section is a puzzle. Johns renders: "If a milch-cow he shall give three GUR of corn to its owner." Harper has "ox(?)."

244

If a man hire an ox or an ass, and a lion kill it in the field, the owner shall bear the loss.

We have the following parallel in Ex. 22: 13.

If it [a beast] be torn in pieces, let him bring it for a witness: he shall not make good that which was torn.

245

If a man hire an ox and by neglect, or bad treatment, kill it, he shall give its owner another ox of like value in its place.

The Hebrew law offers an almost exact parallel to Sections 245–249. It reads:

And if a man borrow aught of his neighbor, and it be hurt, or die, the owner thereof not being with it, he shall surely make restitution. If the owner thereof be with it, he shall not make it good; if it be an hired thing, it came for its hire. (Ex. 22 : 14 f. See 263.)

246

If a man hire an ox, and he break its leg or cut off the muscles of its neck [ham-string, Harper], he shall give its owner an ox of like value in its place.

247

If a man hire an ox and destroy its eye, he shall pay its owner one-half of its value.

248

If a man hire an ox and break off its horn, or cut off its tail, or injure its nostrils, he shall pay one-quarter of its value.

249

If a man hire an ox, and a god strike it, and it die, the man who hired it shall swear before God [in open court] and he shall be acquitted.

See note under 244.

250

If an ox, while passing through the streets [market], gore and kill a man, this case is not subject to litigation.

The Hebrew is more severe. It runs thus:

And if an ox gore a man or a woman, that they die, the ox shall be surely stoned, and its flesh shall not be eaten; but the owner of the ox shall be quit. (Ex. 21 : 28.)

251

If a man's ox were known to gore, and he had been notified that it was a gorer, and he have not wound up its horns, and have not shut it up, and the ox gore a free-born man, and kill him, he shall pay one-half mina of silver.

The Hebrew law is much more severe, showing clearly that a higher value was set upon life in Israel than in Babylonia. We read:

But if the ox were wont to gore in time past, and it hath been testified to its owner, and he hath not kept him in, but that he hath killed a man or a woman: the ox shall be stoned and his owner also shall be put to death. (Ex. 21 : 29.)

252

If it kill the slave of a man, he [the owner] shall pay one-third mina of silver.

The penalty or fine, unless the price of silver varied, was considerably higher in Israel. The Hebrew reads thus:

If the ox gore a man-servant or a maid-servant; he shall give unto their master thirty shekels of silver, and the ox shall be stoned. (Ex. 21 : 32.)

Notice the last clause especially.

253

If a man hire a man to tend his field [farm], furnish him seed, intrust him with oxen, and engage him to cultivate the field; if he steal grain or plants, and they be found in his hands, one shall cut off his hands.

254

If he take the seed-grain, and do not work the oxen, he shall replace the quantity of grain received for sowing.

We have given Winckler's translation. Both Harper and Johns give a very different rendering. The former has: "If he take the seed-grain and overwork the oxen, he shall restore the quantity of grain which he has hoed." Johns has: "If he has taken the seed, worn out the oxen, from the seed which he has hoed he shall restore."

255

If he sublet the oxen of the man, or steal the seed-grain, and do not cultivate the field, he shall be indicted, and shall pay sixty GUR of grain per ten GAN.

Winckler has: "for one hundred gan he shall pay sixty gur of grain."

256

If his community be not able to pay for him, he shall be left with the cattle on the field.

Both Harper and Johns render the above differently. We subjoin Harper's translation: "If he be not able to meet his obligation, they shall leave him in that field with the cattle." Winckler, in a note, says that the community was responsible for the individual. The section is very obscure.

257

If a man hire a field-laborer, he shall pay eight GUR of grain per year.

258

If a man hire an ox-driver, he shall pay him six GUR of grain a year.

259

If a man steal a water-wheel [a machine for irrigation], from a field, he shall pay the owner five shekels of silver.

260

If he steal a watering-bucket or a plow, he shall pay three shekels of silver.

261

If a man hire a shepherd to pasture cattle or sheep, he shall pay him eight GUR of grain a year.

262

If a man, an ox or a sheep to . . . [the inscription is defective here and can not be read].

263

If he lose an ox or sheep intrusted to him, he shall compensate the owner, ox for ox, sheep for sheep.

We have the following in Hebrew legislation:

If a man deliver unto his neighbor an ass, or an ox, or a sheep, or any beast to keep; and it die, or be hurt, or driven away, no man seeing it, the oath of the LORD shall be between them both, whether he hath not put his hand unto his neighbor's goods; and the owner thereof shall accept it, and he shall not make restitution. But if it be stolen from him, he shall make restitution unto the owner thereof. If it be torn in pieces, let him bring it for witness; he shall not make good that which was torn. And if a man borrow

aught of his neighbor, and it be hurt, or die, the owner thereof not being with it, he shall surely make restitution. If the owner thereof be with it, he shall not make it good; if it be an hired thing, it came for its hire. (Ex. 22: 10–15.)

264

If a shepherd to whose care cattle or sheep have been intrusted, who received his wages according to the stipulated pay, allow the number of cattle or sheep to decrease, or lessen the increase by birth, he shall make good the increase and produce according to the wording of his contract.

265

If a shepherd to whom cows and sheep have been given to pasture act fraudulently, or make false returns regarding the increase, or sell them for money, he shall be indicted, and shall render to their owner oxen and sheep tenfold for what he has stolen.

Hebrew legislation offers the following parallel:

If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall pay five oxen for an ox and four sheep for a sheep. . . . If the theft be found in his hand alive, whether it be ox, or ass, or sheep; he shall pay double. (Ex. 22: 1 and 4.)

In case the thief had nothing wherewith to pay, he might be made a slave. (See Gen. 44: 17.)

266

If a stroke of God [any accident] happen in a stable, or a lion kill it [any beast], the shepherd shall declare his innocence before God, and the owner of the stable shall suffer the loss.

267

If a shepherd overlook anything, and an accident take place in a stable, the shepherd shall make good in cattle or sheep the damage for which he is at fault, and give to the owner.

Nearly the same law is enforced among the Bedouins to this day. (See Ex. 22: 12, and remarks under 263 and 265.)

268

If a man hire an ox to thresh, the pay is twenty KA of grain.

269

If a man hire an ass to thresh, the pay is twenty KA of grain.

Both Harper and Johns have ten KA for twenty.

270

If a man hire a young animal to thresh, the pay is ten KA of grain.

Lalu, rendered young animal in this section, may be a young calf or goat. Both Harper and Johns have one KA for ten.

271

If a man hire oxen, cart and driver, he shall pay one hundred and eighty KA of grain a day.

272

If a man hire a cart only, he shall pay forty KA of grain a day.

273

If a man hire a laborer from new year to the fifth month [April to August], he shall pay six SE of silver a day; from the sixth month to the end of the year [September to April] he shall pay five SE of silver a day.

The stele is so mutilated here that it is not possible to read the inscription with any degree of accuracy. We subjoin the section as given by Johns:

274

If a man shall hire an artisan, —

(a) the hire of a ——, five SE of silver,
(b) the hire of a brickmaker, five SE of silver,
(c) the hire of a tailor, five SE of silver,
(d) the hire of a stone-cutter, —— SE of silver,
(e) the hire of a ——, —— SE of silver,
(f) the hire of a ——, —— SE of silver,
(g) the hire of a carpenter, four SE of silver,
(h) the hire of a ——, four SE of silver,
(i) the hire of a ——, —— SE of silver,
(j) the hire of a builder, —— SE of silver, — *per diem* he shall give.

Here Johns enumerates five kinds of mechanics, or just one-half what was on the stele when first written. Harper gives four, and omits six. Enough, however, is given to show that skilled mechanics received between four and five SE per day. There were 180 SE in a shekel: thus five SE would be $\frac{1}{36}$ of a shekel. If a shekel was equal to about sixty-five cents in our money, it will be seen that wages were excessively low; and yet the intrinsic value of the money must be distinguished from its purchasing power. Thus, if the wages of a mechanic were not quite two cents a day, no doubt wheat and other products were sold at very low prices.

275

If a man hire a ——, its hire shall be three SE of silver a day.

Owing to the mutilated condition of the text, the exact kind of boat can only be a matter of conjecture.

276

If a man hire a row-boat, he shall pay two and a half SE of silver per day.

Here again the kind of boat is very uncertain. Both Scheil and Johns have "a fast ship"; Harper has "sail-boat." (See remarks under 240.)

277

If a man hire a boat of sixty GUR, he shall pay one-sixth shekel per day as its hire.

278

If a man buy a male slave or a female slave, and, before a month has elapsed, the slave be attacked by the bennu sickness, he shall bring back the slave to the seller, and the buyer shall get back the money he paid.

The word bennu has puzzled translators. Scheil suggests paralysis. Harper has "bennu fever."

279

If a man buy a male slave or a female slave, and another claim the same, the seller has to satisfy the claim.

280

If a man buy in a foreign country a male slave or a female slave, and he return to his own land, and the former owner of this male slave or female slave recognize the same, if the male slave or female

slave be a native of the country, he shall give them back without compensation in money.

Both Harper and Johns translate the last clause quite differently: "He shall grant them their freedom without money (price)."

281

If they be natives of another country, the buyer shall declare before God [in open court] the sum of money he paid for them, and the former owner of the male slave or female slave shall give to the merchant the money paid for them, and he [the former owner] shall recover his male or his female slave.

282

If a slave say to his master, "Thou art not my master," if his master shall prove him to be his slave, he may cut off his ear.

Chapter XV

THE PENTATEUCH [1]

FIRST BOOK

Genesis: Chap. II, 22–24. — The making of woman and institution of marriage.

Chap. IV, 8–24. — Murder of Abel. Curse of Cain. Cain builds a city. Lamech takes two wives.

Chap. VI, 1–8. — Wickedness of the world. The giants. God repents the creation of man. Noah finds grace.

Chap. IX, 1–7. — Blood and murder forbidden.

Chap. XIV, 1–21. — Battle of the kings in the days of Amraphel (Hammurabi). Lot is taken prisoner, but rescued by Abram. Melchizedek blesses Abram, and Abram gives him tithe.

Chap. XVI, 1–6. — Sarai gives Hagar to Abram.

Chap. XXIII, 3–20. — Abraham purchases from the sons of Heth a burying-place.

Chap. XXIV, 1–4, 9–12, 15, 17–19, 22, 29–33, 35–45, 50–54, 58–67. — Abraham sends his eldest servant to find a wife for his son Isaac. Rebekah becomes the wife of Isaac.

Chap. XXV, 20, 21, 24–34. — Birth of Esau and Jacob. Esau sells his birthright to Jacob.

Chap. XXVI, 34, 35. — Jacob obtains the blessing of Isaac. Esau threatens Jacob. Rebekah sends Jacob to her brother Laban.

Chap. XXVIII, 1, 2, 9–10. — Esau takes another wife.

[1] [The Bible is so much a household book that it was not deemed necessary to reprint from it in this volume, even the strictly juridical selections. The above references are offered only as suggestive of the principal passages of the Pentateuch having a direct bearing on the then development of legal institutions. See, also, the Code of Hammurabi, Chapter XIV, *supra*, and the parallel references to the Bible there noted.

Opinions differ on the authorship and dates of the books of the Pentateuch (originally known as the Hexateuch as combined with the book of Joshua). The tradition is that they were written by Moses and his contemporaries, about the middle of the second millennium, B.C.; but it is now believed that these books are a composite of at least three elements and put into writing at different times. It is supposed that parts of the Pentateuch were composed as late as the 7th century B.C., and some authorities contend even for a later date in post-exilic times.]

Chap. XXIX, 1, 2, 10–30. — Jacob serves Laban for Leah and Rachel.

Chap. XLVII, 13–27. — The famine in Egypt. Joseph obtains all the land, except that of the priests, for Pharaoh.

SECOND BOOK

EXODUS: Chap. II, 1–21. — Birth of Moses. He kills an Egyptian and is compelled to flee into Midian, where he marries Zipporah.

Chap. XII, 29–40, 43–45, 48–49. — The first-born of Egypt are slain. The Israelites are driven out of Egypt. The ordinance of the Passover.

Chap. XVIII, 13–27. — Moses sits to judge the people. Jethro's counsel.

Chap. XX. — The ten commandments.

Chap. XXI. — Laws for men-servants, women-servants, for murder and manslaughter, for men-stealers, etc.

Chap. XXII. — Laws of theft, damages, trespass, loans, witchcraft, idolatry, concerning strangers, widows, etc.

Chap. XXIII. — Concerning slander and false witness, justice, charity, etc.

THIRD BOOK

LEVITICUS: Chap. V. — Atonements, and trespass offerings.

Chap. VI. — Atonements continued.

Chap. XI. — What beasts may and may not be eaten.

Chap. XIX. — Repetition of sundry laws.

Chap. XXV. — The jubilee year. Redemption of lands, slaves, etc.

FOURTH BOOK

NUMBERS: Chap. I. — The census of the Israelites.

Chap. XXVI, 1, 2, 51–65. — The census, and the inheritance of land.

Chap. XXVII, 1–11. — The daughters of Zelophehad sue for an inheritance. The law of inheritance.

Chap. XXX. — Vows of maidens, wives, widows, and divorced women.

Chap. XXXV, 6–34. — The six cities of refuge. Laws concerning murder.

Chap. XXXVI. — Concerning inheritance of daughters. Marriage within the tribe.

FIFTH BOOK

DEUTERONOMY: Chap. XV, 1–18. — The seventh year, a year of release of debts and Hebrew slaves.

Chap. XVI, 18–20. — Of judges and justice.

Chap. XVII. — Settlement of controversies by the priests. Election of a king and his duties.

Chap. XIX. — Cities of refuge. Landmarks not to be removed. Witnesses.

Chap. XXI. — Expiation of an uncertain murder. Usage of a captive wife. The first-born not to be disinherited.

Chap. XXIII, 15, 16, 19, 20, 24, 25. — Escaped slaves. Usury. Subsistence.

Chap. XXIV. — Concerning divorce, pledges, man-stealers, justice, etc.

Chap. XXV. — Punishment. Raising seed to a brother. Unjust weights, etc.

Chapter XVI

EDICT OF HARMHAB[1]

I. INTRODUCTION

* * * * * * *

II. INTRODUCTION: THE KING'S ZEAL FOR THE RELIEF OF THE PEOPLE

2. His majesty took counsel with his heart [how he might] —— [exp]el evil and suppress lying. The plans of his majesty were an excellent refuge, repelling violence behind —— [and delivering the Egyptians from the oppressions] which were among them. Behold, his majesty spent the whole time seeking the welfare of Egypt and searching out instances [of oppression in the land]. —— [came the scribe] of his majesty. Then he seized palette and roll; he put it into writing according to all that his majesty, the king himself said. He spoke as follows: "[My majesty] commands —— [concerning all] instances of oppression in the land.

[1] [Reprinted with the consent of the publisher from "Ancient Records of Egypt" (Vol. iii, p. 22 *seq.*), by James H. Breasted, University of Chicago Press (1906).] This is the most important edict [Nineteenth Dynasty, about 1350–1315 B.C.] which has come down to us from ancient Egypt, and it is much to be regretted that its very fragmentary state, together with the execrable manner in which it has been published, has deprived us of so many of its important data.

The edict contains the practical legislation of Harmhab by means of which he intended to prevent the oppressive abuses connected with the collection of taxes from the common people, who were continually robbed and impoverished by the fiscal officers. This legislation consists of a series of enactments, each of the following form:

(*a*) Statement of the abuse as it existed before this legislation and the king's displeasure at it.

(*b*) Statement of a hypothetical commission of the offense by the officials concerned.

(*c*) Declaration of the penalty to be inflicted.

* * * * * * *

In the translation it has been necessary to indicate the connection between the beginnings of the lines, a large portion of the ends having been lost. These connecting insertions contain only what was probably the intervening thought, without any attempt to reproduce the lost words. [Most of the elaborate typographical marks and special characters of the original text of the author have been omitted in this reprinting. A dash indicates either a lacuna or an uncertainty.] — Translator's Note.

III. ENACTMENT AGAINST ROBBING THE POOR OF DUES FOR THE ROYAL BREWERIES AND KITCHENS

3. If the poor man made for himself a craft with its sail, in order to be able to serve the Pharaoh, L. P. H., [loading it with the dues for the breweries and kitchens of the Pharaoh, and he was robbed of the craft and] the dues, the poor man stood reft of his goods and stripped of his many labors. [This is wrong, and the Pharaoh will suppress it by] his excellent measures. If there be a [poor man] who pays the dues of the breweries and kitchens of the Pharaoh, L. P. H., to the two deputies, [and he be robbed of his goods and his craft, my majesty commands: that every officer who seizeth the dues] and taketh the craft of any citizen of the army or of any person who is in the whole land, the law shall be executed against him, in that his nose shall be cut off, and he shall be sent to Tha[ru].[1]

IV. AGAINST ROBBING THE POOR OF WOOD DUE THE PHARAOH

4. [Furthermore, concerning the impost of wood, my majesty commands that if any officer find] a poor man without a craft, then let him bring to him a craft for his impost from another, and let him send him to bring for him the wood; thus he[2] shall serve [the Pharaoh].

V. AGAINST EXACTING DUES FROM A POOR MAN THUS ROBBED

5. [Furthermore, my majesty commands that if any poor man be oppressed by] [robbe]ry, his cargo be emptied by theft of them, and the poor man stand reft of hi[s good]s, [no further exactions for dues shall be made from him] when he has nothing. For it is not good, this report of very great injustice. My majesty commands that restitution be made to him; behold, ——

[1] This is a remarkable corroboration of *Strabo*, who mentions Rhinocolura as "so called from the colonists, whose noses had been mutilated. Some Ethiopian invaded Egypt and, instead of putting the malefactors to death, cut off their noses and settled them at Rhinocolura" (XVI, II, 31; translation of *Hamilton* and *Falconer*, III, 176). See also *Herodotus*, II, 37, and *Diodorus*, I, 60 and 65; and *Müller*, "Zeitschrift für ägyptische Sprache," I, 1888, 81.

[2] The ambiguity of the pronouns is also in the original.

VI. AGAINST ROBBING THE POOR OF DUES FOR THE HAREM OR THE GODS BY THE SOLDIERS

6. [Furthermore, as for those who] —— and those who bring to the harem, likewise for the offerings of all gods, paying dues to the two deputies of the army and ——, [my majesty commands that if any officer is guilty of extortions or thefts], the law [shall be executed] against him, in that his nose shall be cut off, and (he) shall be sent to Tharu likewise.

VII. AGAINST UNLAWFUL APPROPRIATION OF SLAVE SERVICE

7. When the officers of the Pharaoh's house of offerings have gone about tax-collecting in the towns, to take [katha-plant] [they have seized the slaves of the people, and kept them at work] for 6 days or 7 days, without one's being able to depart from them afar, so that it was an excessive detention indeed. It shall be done likewise against them. If there be any place [where the stewards shall be tax-collecting, and any one] shall hear, saying: "They are tax-collecting, to take katha-plant for themselves," and another shall come to report, saying: "My man slave (or) my female slave has been taken away [and detained many days at work by the stewards"; it shall be done likewise against them].

VIII. AGAINST STEALING OF HIDES BY THE SOLDIERS

8. The two divisions of troops which are in the field, one in the southern region, the other in the northern region, stole hides in the whole land, not passing a year, without applying the brand of [the royal house to cattle which were not due to them, thereby increasing] their number, and stealing that which was stamped from them. They went out from house to house, beating and plundering without leaving a hide for [the people ——. Then the officer] of Pharaoh went about to each one, [to collect the hides charged against him and came to the people demanding] them, but the hides were not found with them (although) the amount charged against them could be established. They satisfied them, saying: "They have been stolen from us." A wretched case is this, therefore it shall be [done] likewise.

9. When the overseer of the cattle of Pharaoh, L. P. H., goes about to attend to the loan-herds in the whole land, and there be not brought to him the hides of the —— which are on the lists,

[he shall not hold the people responsible for the hides if they have them not, but they shall be released by command of his majesty,] according to his just purposes.[1] As for any citizen of the army, (concerning) whom one shall hear, saying: "He goeth about stealing hides," beginning with this day, the law shall be executed against him, by beating him a hundred blows, opening five wounds, and taking from him by force the hides which he took.

IX. AGAINST CONNIVANCE OF DISHONEST INSPECTORS WITH THIEVISH TAX-COLLECTORS, FOR A SHARE OF THE BOOTY

10. Now, as for this other instance of evil which the [official staff were accustomed to commit, when they held inspection] in the land, of that which happened [against the law] [the table-scribe of] the queen and the table-scribe of the harem went about after the official staff, punishing them and investigating the affair —— of the one who sailed down- or up-river. One investigated it among the officials in the time of the King Menkheperre (Thutmose III). Now, when the one who sailed down- or up-river whom they took; and when [the superior officials of] [the king], Menkheperre, went about [after these officials] each year, [that they might make an] expedition to the city, and that these superior officials might come to these officials, saying: "Give thou [to us] the consideration for the careless expedition"; then, behold, the Pharaoh, L. P. H., made the expedition at the feast of Opet each year without carelessness. One prepared the way before the Pharaoh [and questioned the local magistrate, wherever he] landed, [concerning the corrupt official] causing him to —— what he (the corrupt official) was like. As for the one who goes about again, afterward, to seek the consideration, —— then these officials shall do about with the expedition concerning the affairs of these poor people —— My majesty commands to prevent that one shall do thus, beginning with this day —— the landing; he is the one against whom one shall prosecute it.

X. AGAINST STEALING VEGETABLES UNDER PRETENSE OF COLLECTING TAXES

11. Likewise the collection of vegetables for the breweries [and kitchens of the Pharaoh and] —— [Extortion was prac-

[1] The meaning probably is that the cattle loaned on contract by the Pharoah sometimes died, in which case the people must show the hides. These the corrupt officials often stole before the overseer of cattle arrived.

ticed, and the officials plundered] the poor, taking the best of their vegetables, saying: "They are for the impost [of the Pharaoh]." [Thus they] robbed the poor of their labors, so that a double [impost was levied. Now, my majesty commands that as for any officials who come to] collect vegetables [for] the impost of Pharaoh, L. P. H., in the arbors, and the —— houses of the estates of Pharaoh, L. P. H., and the —— of Pharaoh which contain vegetables (concerning whom) one shall hear, saying: "They —— for any —— of any citizen of the army, or [any] people, [beginning with this day, the law shall be executed against them] —— transgressing commands.

XI. ENACTMENTS TOO FRAGMENTARY FOR ANALYSIS

12. (The fragmentary condition [of these lines] makes any coherent rendering impossible. They contain, however, a new enactment of the greatest interest regarding taxation of grain, in which there is an apparent contrast between the property owners, or citizens of the city, and the poor, thus:)

13. Now as for these officials of the herds, who go about —— in the southern region or the northern region collecting grain from the [citizens] of the city —— going about —— in the southern region or northern region collecting —— from the poor ——.

14. —— going about taking possession to bring every citizen, to cause them to see —— (concerning whom) one shall hear, (saying) "—— a crime, —— collectors of the harem who go about in the [towns tax-collecting] —— the —— of the fishermen —— carrying the ——"

XII. NARRATIVES OF THE KING'S REFORMS, CONTAINING ALSO AN ENACTMENT AGAINST CORRUPT JUDGES

APPOINTMENT OF TWO JUDGES

15. I have improved this entire land —— I have sailed it, as far as south of the wall, I have given ——, I have learned its whole interior, I have traveled it entirely in its midst, I have searched in —— [and I have sought two officials] perfect in speech, excellent in good qualities, knowing how to judge the innermost heart, hearing the words of the palace, the laws of the judgment-hall. I have appointed them to judge the Two Lands, to satisfy those who are in —— [I have given to each one] his seat;

I have set them in the two great cities of the South and the North; every land among them cometh to him without exception; I have put before them regulations in the daily register [of the palace] —— and I have directed them to the way of life, I lead them to the truth, I teach them, saying: "Do not associate with others of the people; do not receive the reward of another, not hearing ——. How, then, shall those like you judge others, while there is one among you committing a crime against justice?"

Now, as to the obligation of silver and gold —— [my] majesty remits it, in order that there be not collected an obligation of anything from the official staff of the South and North.

PUNISHMENT OF BRIBERY

16. Now, as for any official or any priest (concerning whom) it shall be heard, saying: "He sits, to execute judgment among the official staff appointed for judgment, and he commits a crime against justice therein;" it shall be against him a capital crime. Behold, my majesty has done this, to improve the laws of Egypt, in order to cause that another should not be ——.

APPOINTMENT OF LOCAL COURTS

17. [Behold, my majesty appointed] the official staff of the divine fathers, the prophets of the temples, the officials of the court of this land and the priests of the gods who comprise the official staff out of desire that they shall judge the citizens of every city. My majesty is legislating for Egypt, to prosper the life of its inhabitants; when he appeared upon the throne of Re. Behold, the official staffs have been appointed in the whole land —— all —— to comprise the official staffs in the cities according to their rank.

XIII. THE KING'S AUDIENCES AND LARGESSES

18. ——They[1] went around ——times a month, which he made for them like a feast; every man sat down at a portion of every good thing, of good bread, and meat of the storehouses, of royal provision —— their voices reached heaven, praising all benefits —— the heart of all the soldiers of the army. [The king appeared to the people] —— throwing (gifts) to them from the balcony

[1] These must be the inspecting officials who are thus so liberally provided for, that they have no occasion to accept bribes, etc.

while every man was called by his name by the king himself. They came forth from the presence rejoicing, laden with the provision of the royal house; yea, they took grain heaps in the granary, every one of them bore barley and spelt, there was not found one who had nothing —— their cities. If they did not complete the circuit therein within three days, —— their khetkhet-officers hastened after them to the place where they were immediately. They were found there ——.

XIV. LAUDATION OF THE KING, AND CONCLUSION

19. (Little can be made out of these nine lines. In line 9, the conclusion of the whole edict can be discerned:)

Hear ye these commands which my majesty has made for the first time governing the whole land, when my majesty remembered these cases of oppression which occur before this land.

Chapter XVII

THE LAWS OF GORTYN[1]

SECTION 1

CLAIMS TO FREEDOM OR TO POSSESSION OF A SLAVE

I. Whoever is going to contend about a freeman or slave, shall not lead him away before trial. And if he lead him away (the judge) shall adjudge (a fine of) ten staters in case of a freeman, five in case of a slave for leading him away, and shall judge that he let him go within three days. And if he shall not let him go, he shall adjudge (a fine of) a stater in case of a freeman, a drachm in case of a slave for each day until he let him go, and with respect to the time the judge shall decide on oath.

And if he should deny leading him away, the judge shall decide on oath, unless a witness should declare.

And if the one contend that he is free and the other that he is a slave, the stronger shall be they who declare him to be free. And if they contend about a slave, saying each that it is his (slave), if a witness declare it, the judge shall decide according to the witness, but if they either declare for both or for neither, the judge shall decide on oath.

And if the possessor lose his suit, he shall let a freeman go within five days, but a slave he shall give back into hands (of his opponent). And if he let him not go or give him not back, (the judge) shall adjudge him to win in case of a freeman fifty staters, and a stater for each day until he let

[1] [This code, the date of which is usually given as about 450 B.C., was inscribed on blocks of gray limestone forming part of a wall, the ruins of which were discovered in Crete in the summer of 1884. The translation is by Dr. H. J. Roby, and was published in the "Law Quarterly Review," vol. II (1886), p. 142 *seq.* An account of the discovery is given (*l. c.*) at page 135. These laws, like the Roman Twelve Tables (see Chapter XVIII) were in the form of twelve tables or rather columns.

This translation is reprinted by permission of Sir Frederick Pollock, editor of the "Law Quarterly Review," and of the translator.

The Roman numerals at the side denote the columns; the topical analysis is by the translator.]

him go, and in case of a slave ten staters and a drachm for each day until he give him back into hands. And if the judge shall adjudge (a fine), there shall be exacted within a year threefold or less, not more, and with respect to the time the judge shall decide on oath.

And if the slave, in whosoever case he has lost his suit, take sanctuary, (the defendant) summoning him in the presence of two witnesses, runners, freemen shall point out (the fact) at the temple wherever he be in sanctuary, either (the defendant) himself or another on his behalf; and if he summon not and point not out, he shall restore what has been written.

And if he even give him not back in the year, he shall besides restore the single values, and if he die, while the suit is in contention, he shall restore the single value.

And if (one when) Ruling lead away (a slave), or another lead away (a slave) of one Ruling, if he leave office, he shall contend, and if he lose his suit he shall restore . . . what has been written.

To one that leads away (a slave) won in a suit . . . (or) pledged, there shall be no damage.

II.

SECTION 2

RAPE, ADULTERY, AND THE LIKE

* * * * * * *

SECTION 3

A WOMAN'S RIGHT TO PROPERTY AFTER DIVORCE OR HUSBAND'S DEATH

If a man and woman separate, she shall have her own things, which she had when she went to the man, and the half of the fruit, if it be from her own goods, and the . . . (part?) whatever it be (of) whatever she has woven, and five staters, if the man be the cause of the divorce; but if

III. the man should say . . . the judge shall decide on oath.

But if she should bear off anything else of the man's, she shall restore five staters, and whatever she bear off, itself (shall she give back), and whatever she have taken away, itself shall she give back. And whatsoever things she shall deny (having taken), the judge shall adjudge the woman to deny on oath by Artemis, near the Amyclæum

near the Bowwoman. And whatever any one shall take away from her, after she has denied on oath, (he) shall restore five staters and the thing itself. And if a stranger join in *packing up*(?), he shall restore ten staters, and twofold the thing itself, whatsoever the judge shall swear he has joined in *packing up*(?).

If a man should die, leaving children, if the woman will, she shall be wedded, having her own things, and whatever her man have given her according to what is written, in presence of three witnesses, runners, freemen; but if she bear off anything of the children's, there shall be right to sue.

And if he leave her childless, she shall have her own things, and of whatever she has woven the half, and of the fruit from within a . . . share with those belonging, and anything her man have given her as is written; but if she bear off anything else, there shall be right to sue.

And if a woman should die childless, there shall be given back to those belonging her own things, and the half of what she has woven, and the half of the fruit, if it be from her own things.

Guerdon if man or woman will to give (they shall give) either dress or twelve staters or a piece of goods worth twelve staters, and not more.

If a female householder be separated from a male householder in his life or by his death, she shall have her own things; but if she bear off anything else, there shall be right to sue.

SECTION 4

DISPOSAL OF A CHILD BORN AFTER DIVORCE, OR CHILD OF UNMARRIED SLAVE

If a woman bear a child while divorced, (she) shall send it to the man to his roof in the presence of three witnesses. And if he should not receive it, the child shall be at the mother's disposal to bring up or to put away; and the kinsmen and the witnesses shall be more sworn whether they sent the child.

And if a female householder bear a child while divorced (she) shall send it to the lord of the man, who wedded her, in the presence of two witnesses. And if he shall not

IV. receive it, the child shall be at the disposal of the lord of the female householder. And if she should be wedded again to the same man in the course of the first year, the child shall be at the disposal of the lord of the male householder, and he that sent it shall be more sworn and the witnesses.

A woman divorced, if she should cast away a child before sending according to what is written, shall restore in case of a free (child) fifty staters, in case of a slave five-and-twenty, if she lose the suit. But if a man has no roof whither she shall send it, or she do not see him, if she should put away the child, it shall be without damage (to her).

If a female householder unwedded should conceive and bring forth, the child shall be at the disposal of the lord of the father. But if the father should not be alive, it shall be at the disposal of the lords of the brothers.

SECTION 5

DIVISION OF PARENTS' PROPERTY AFTER DEATH

The father shall have power over the children and over the goods, over the division (thereof), and the mother over her own goods. While they live, it shall not be necessary to divide; but if one should be cast in damages, division shall be made to him that is cast in damages as has been written.

And if one die, the roofs in the city and whatever is in the roofs, in which no householder houses, housing on the spot, and the cattle and the strong-footed, such as are not a householder's, shall be at the disposal of the sons, and all the other goods they shall well divide, and the sons as many soever as they be shall be allotted each two shares, and the daughters as many soever as they be, each one share.

(And they shall divide) the mother's things also, if she die, as . . . And if there be no goods but there be a roof, the daughters shall have allotted to them, as has been written.

And if the father being alive will to give to her that is being wedded, he shall give according to what is written and not more. And to whomsoever he before gave or promised this shall she have and not be allotted other

V. things. Whatever woman has no goods either from her father's gift or her brother's, or his promise or by allotment *from the time that*(?) the Æthalian troop, Kyllos and friends, were rulers, these woman shall have allotments, but for those previous there shall be no right to sue.

If a man or woman die, if there be children or children's children or children of these, they shall have the goods. And if there be none of these, but there be sisters of the deceased and sister's children or children's children, they shall have the goods. And if there be none of these, (then) to whomsoever it belongs, whenever it be, they shall take the goods to themselves. And if there should not be any belonging, then whoever be the lot of the house, these shall have the goods.

And if (of) those belonging, some will to divide the goods and some do not, the judge shall adjudge all the goods to be at the disposal of those who will to divide, until they divide. And if, after the judge has adjudged it, (any one) by force *disturb*(?) or lead away or bear off, he shall restore ten staters and the thing itself twofold. And (in respect) of mortals and fruit and clothing and bracelets and superficial goods, if they will not to divide . . . shall decide on oath in reference to the matters in contention. And if in dividing the goods they do not agree about the division, they shall put up the goods for sale, and selling to whosoever offers most, they shall allot themselves (of) the value each the share belonging. And when they divide the goods, there shall be present three or more witnesses, runners, freemen.

VI. If he give to a daughter, (it shall be) according to the same (rules).

SECTION 6

SEPARATE PROPERTY OF CHILDREN AND MOTHER

While the father lives, no one shall buy or take in pledge from the son (any) of the father's goods, but whatsoever he have himself acquired or had allotted to him, he shall sell if he will. Nor shall the father (sell or promise) the children's goods, whatever they have themselves acquired or had allotted to them, nor shall the man sell or promise the woman's, nor the son the mother's. And if any one should buy or take in pledge or obtain promise, and it is

written otherwise than these writings are written . . . the goods shall be at the disposal of the mother and at the disposal of the woman, and he who sold or gave in pledge or promised shall restore twofold to him that bought or took in pledge or obtained promise, and if there be any other matter of damage, the single (value) : and for matters previous there shall be no right to sue. And if the opposite contendant contend in respect of the thing, whatever they are contending about, that it is not the mother's or the woman's, he shall contend in whatever way it belongs (to contend) before the judge as each thing is written.

And if the mother die leaving children, the father shall have power over the mother's things, but shall not sell nor pledge unless the children being runners approve. And if one should buy or take in pledge otherwise, the goods shall be at the disposal of the children, and he that sold or he that pledged shall restore to him that bought or took in pledge the double of the value, and if there be any other matter of damage, the single (value). But if he wed another woman, the children shall have power over the mother's things.

SECTION 7

RIGHTS OF REDEEMER IN THE REDEEMED CAPTIVE

And if . . . being held in bondage from a foreign state, and by his choice some one shall redeem him, he shall be at the disposal of the redeemer, until he pay back what belongs. And if they do not agree about the amount, or (it be asserted) that he redeemed him without his choice, the judge shall decide on oath in reference to the matters in contention.

SECTION 8

STATUS OF CHILD OF FREE AND SLAVE PARENTS

? ? . . . (if) coming to a freewoman he wed her, the children shall be free. But if a freewoman to a slave, the
VII. children shall be slave. And if there be born from the same mother free and slave children, if the mother die, if there be goods, the free children shall have them ; but if freemen should not be forthcoming, those belonging shall take them to themselves.

SECTION 9

RESPONSIBILITY FOR WRONGFUL ACTS OF A PURCHASED SLAVE

If (one) after buying a slave from the market, shall not *export*(?) him within sixty days, if he have wronged any one before or after, there shall be right of suit to him that has acquired (him).

SECTION 10

MARRIAGE AND PROPERTY OF HEIRESS

An heiress shall be wedded to her father's brother, the eldest of those that are. And if there be more heiresses and father's brothers, (the second) shall be wedded to the next eldest. And if there be no father's brothers, but brothers' sons, (she) shall be wedded to one that is (child) of the eldest. And if there be more heiresses and more brothers' sons (the next eldest heiress) shall be wedded to another who is next to him that is (child) of the eldest. And he that belongs shall have one heiress and not more.

And so long as he to whom it belongs to wed be unripe, or the heiress (be unripe), the heiress shall have the roof, if there be one, and he to whom it belongs to wed shall have allotted to him the half of the produce of all. And if he to whom it belongs to wed, being aloof from running, will not (though) grown, to wed her (though) grown, all the goods and the fruit shall be at the disposal of the heiress until he wed her. But if being a runner he to whom it belongs will not to wed her grown (and) willing to be wed, the kinsmen of the heiress shall contend, and the judge shall adjudge him to wed within two months; and if he wed her not, as is written, she having all the goods (shall be wedded) to him that belongs if there be another. And if there should be none belonging, she shall be wedded to whomever she will of those of the tribe who ask.

And if (when) grown she will not be wedded to him that
VIII. belongeth, or he that belongeth be unripe, and the heiress . . . the heiress shall have the roof, if there be one, in the city, and whatever is in the roof, and having allotted to her the half of the other things she shall be wedded to another, whomever she will of those of the tribe who ask; and a portion of the goods shall be given to one.

And if there should not be any persons belonging to the heiress as is written, she, having all the goods, shall be wedded to whomever of the tribe she will. And if no one of the tribe should will to wed her, the kinsmen of the heiress . . . not . . . to wed her; and if one wed her within thirty days from the time they have (so) said, (well), but if not she shall wed another whomever she may be able.

And if, her father or brother having given her (in marriage), she become heiress, if he to whom they gave her being willing to wed, she should not be willing to be wedded, if she has had children, (then) having allotted to her (half) of the goods as has been written she shall be wedded to . . . ; but if there should be no children, having all (the goods) she shall be wedded to him that belongs, if there be one, and if not, (then) as has been written.

If a man should die leaving children to an heiress, if she will she shall be wedded to whomever of the tribe she can, but without compulsion. But if the dead man should leave no children, she shall be wedded to him that belongs, as has been written. And if he to whom it belongs to wed the heiress should not be resident and the heiress be ripe, she shall be wedded to him that belongs, as has been written.

And (one) shall be heiress, if there be no father or brother from the same father. And over the working of the goods the father's brothers shall have power . . . the half as long as she be . . . And if while she is unripe, there should be no one belonging, the heiress shall have power over the goods and the fruit, and so long as she be unripe, she shall be brought up with her mother; and if there should not be mother, she shall be brought up with her mother's brothers.

And if any should wed the heiress and it has been otherwise written . . . those belonging (if) he leave an heiress
IX. . . . (if) any one should buy goods or take in pledge any of the goods of the . . . , the goods shall be at the disposal of the heiress, and he that sold or pledged shall to him that bought or took in pledge restore, if he lose his suit, twofold, and if there be any other damage he shall besides restore the single value, as . . . and for matters previous there shall be no right to sue. And if the opposite contendant contend about the thing for which they are contending that it is not the heiress's, the judge shall decide

on oath; and if he should win that it is not the heiress's, he shall contend, in whatever way it belongs (to contend) as each thing is written.

SECTION 11

PROCEDURE IN CERTAIN CASES OF SURETYSHIP AND OTHER OBLIGATIONS

If a man should die having become surety or having lost a suit, or owing *securities*(?), or having *cheated*(?) or having *made an agreement*(?), or another to him, (he) shall contend in the course of the first year: and the judge shall give judgment in reference to the matters in contention. If he contend upon a suit won, the judge and the registrar if he be alive and a citizen, and the witnesses who belong (shall declare), and of a suretyship and of *securities*(?), and of *cheating*(?) and of an *agreement*(?), those who belong shall declare as witnesses. And if they fail, he shall adjudge that (the plaintiff), himself on oath and the witnesses, shall win the single value.

If a son become surety, so long as his father live, he shall be led away, himself and the goods, whatever he has acquired.

If any one do not give back . . . [1½ lines broken] . . . if grown witnesses declare, in case of a hundred staters or more, three (witnesses), in case of less as far as ten staters, two, in case of less, one, he shall give judgment in reference to the declaration made. And if the witnesses should not
X. declare, . . . [2 lines broken] . . . he shall either deny on oath or . . . [15 lines wanting.]

SECTION 12

LIMITATION OF GIFTS IN PREJUDICE OF THOSE HAVING CLAIMS

. . . son to mother . . . a hundred staters or less, but not more; and if (he) should give more, if those belonging will, they shall pay back the money and have the goods. But if any one should give while owing money, or when cast in damages or while a suit is in contention, if the remainder should not be of the worth of the damages, the gift shall be of no good.

SECTION 13

PROHIBITION TO SELL OR PLEDGE A PLEDGED OR DISPUTED SLAVE

(One) shall not buy a man that is pledged before he that pledged have redeemed (him), nor one who is under contention, nor receive (such a gift?), nor obtain promise (of him), nor take (him), in pledge. And if any one should do any of these things, it shall be of no good, if two witnesses should declare (it).

SECTION 14

ADOPTION

Adoption shall be whenever any one will. Adoption shall be in the market-place, when the citizens are assembled, from the stone from which addresses are made. And the adopter shall give to his own club a victim and a pitcher of wine.

And if (the adopted) take over all the goods and there *dwell*(?) not with him natural children, he shall perform the divine and human (duties) of the adopter and take them on himself as is written for natural children. And if he will not to perform them as is written, those belonging shall have the goods. But if there be natural children to the adopter, with the males (shall share) the adopted as the females have allotted to them from their brothers;
XI. and if there be no males but females, the adopted (male) shall have an equal share: and he shall not be obliged to perform the duties of the adopter and to take to himself the goods, whatever the adopter have left; and more the adopted shall not come to.

And if the adopted should die without leaving natural children, the goods shall return to those who belong to the adopter.

And if the adopter (will?), he shall renounce in the market-place from the stone from which addresses are made, when the citizens are assembled. And he shall hand over . . . staters to the law-court. And the registrar shall give them back as a guest-present to him that was renounced.

And a woman shall not adopt, nor shall an ungrown male.

And these shall be dealt with, as he has written these

writings, and for matters previous, however any one be, there shall no longer be right to sue either for the adopted or against the adopted.

SUPPLEMENTARY PROVISIONS

SECTION 15 (*Cf.* SEC. 1)

Whoever leads away a man before trial, shall always be received(?).

SECTION 16

A judge, whatever it has been written he should judge according to witnesses or as denied on oath, shall so judge as has been written; and in respect of other matters he shall decide on oath in reference to the matters in contention.

SECTION 17 (*Cf.* SEC. 11)

If (a man) die, owing money or having lost a suit, if those to whomsoever it belongs will to take over the goods, to restore for him the damages and the money to whomsoever he owes, they shall have the goods. And if they will not, the goods shall be at the disposal of those who won the suit or those to whom he owes the money, and other damage there shall be none to those who belong. And there shall be led away on account of the father the father's goods, and on account of the mother the mother's goods.

SECTION 18 (*Cf.* SEC. 3)

A woman who ever separates from a man, if the judge shall adjudge an oath, shall deny on oath within twenty days in the presence of the judge. Whatever he imputes to her, he shall give notice (thereof) at the *commencement*(?) of the suit to the woman and to the judge and to the registrar the fourth day before in the presence of . . .

XII. [14 lines wanting.]

SECTION 19 (*Cf.* SECS. 3, 12)

If a son gave goods to his mother or a man to a woman, as has been written before these writings, there shall be no right to sue; but for the future he shall give as has been written.

SECTION 20 (*Cf.* SEC. 10)

Heiresses, if there be no orphan-judges, so long as they are unripe, shall be dealt with in accordance with what has been written. And *when*ever(?), there being no one belonging and no orphan-judges, an heiress be brought up with her mother, the father's brother and the mother's brother, who have been written, shall manage the goods and the produce, however they best can, until she be wedded. And she shall be wedded, when aged twelve years or older.

Chapter XVIII

THE TWELVE TABLES[1]

I

1. If [a man] call [another] to law, he shall go. If he go not, they shall witness it; then he shall be seized.

2. If he flee or evade, lay hands on him as he goes.

3. If illness or age hinder, an ox-team shall be given him, but not a covered carriage, if he [defendant?] does not wish.

4. For a rich citizen the surety shall be a rich one; for a poor one, whoever offers shall be surety.

5. [Missing.]

6. Where they settle the matter, let it be told.

7. If they settle not, they shall join issue in the assembly or in the forum before midday, then they shall plead and prove, both being present.

8. After midday, the cause shall be adjudged to the party present [if the other has failed to appear].

9. If both attend, sunset shall be the last moment [of the cause].

10. [Missing.]

II

1. [Missing.]

2. A grievous illness . . . or a date sworn with a non-citizen . . . if any of these happen to judge or arbiter or defendant, the date [for the suit] shall be put over.

3. He who needs a witness shall within three days go to his house and notify him.

III

1. In suits of money debt, after judgment by law, thirty days shall be allowed.

2. Afterwards, he shall be hand-grasped, and led to law.

[1] [Translated by John H. Wigmore from the restored text as given in *C. G. Bruns's* "Fontes juris Romani Antiqui," 7th ed., 1909, edited by *Otto Gradenwitz*, following *Th. Mommsen*. The traditional date given by *Livy* for their enactment is 304 A.U.C., or 450 B.C.]

3. If he do not what is adjudged, or if no one becomes surety for him as he goes to court, he shall be led away and bound with fetters or shackles of weight not more than 15 [pounds], or if he [plaintiff] wills, of lesser weight.

4. If [the debtor] will, he shall feed at his own cost. If not, he who has him bound shall give a pound of meal a day, more if he wishes.

5. [Missing. The debtor could be kept for sixty days, *i.e.* three market-days, being taken to court at intervals.]

6. On the third market-day, they may divide up his [body-] parts. If they divide more or less [than each one's share], it shall not be wrongful.

7. Against a non-citizen, there shall be a perpetual right. . . .

IV

1. [Missing.]

2. If a father thrice give his son for sale, the son shall be free from the father.

3, 4. [Missing.]

V

1, 2. [Missing. The status of women.]

3. As a man [when alive] shall have ordered concerning his money or the custody of his estate, so the law shall do.

4. If he dies without a will, and no heir of his exists, the nearest agnate shall have the family.

5. If no agnate exists, the gentiles shall have the family.

6. [Missing.]

7. If a man become insane, his money and his family power shall go to his agnates and gentiles. . . .

8, 9, 10. [Missing or fragmentary.]

VI

1. When a contract or transfer is to be made, what the tongue has pronounced, so the law shall do.

2, 3, 4. [Missing.]

5. If [two] men contend with hands before the court . . . [with reference to an article to be sold, pledged, etc.].

6. [Missing.]

7. Timber once built into [another person's] house or vine-trellis shall not be taken out of its place [by the former owner].

8. [Missing. Prescribes a penalty of double for the person who used the timber.]

9. [Fragment only.]

VII

1–6. [Missing. Deal with walls, fields, roads, boundaries.]

7. [The abutting owner] shall wall the highway. If the stone-work fall into disrepair, [the traveller] may drive his team whither he will.

8. If rain-water [from the neighbor's eaves] does harm . . .

9–12. [Missing. Deal with easements, sales, emancipations.]

VIII

1. Whoever shall chant an evil spell . . .

2. If [a man] has broken the limb [of another] and does not settle with him, let there be retaliation.

3. If [a man] with fist or club breaks the bone [of another] he is liable to penalty, of 300 [pence] if done to a free man, 150 if done to a slave.

4. If he makes an assault, 25 [pence] are the penalty.

5–11. [Missing, or fragmentary. Deal with damage by animals, evil spells for crops, night trespasses, arson, tree-cutting, etc.]

12. If by night [a man] have done a theft, and [the owner] kill him, let him be [as if] killed by law.

13. If by daylight . . . [a man commit a theft, and] defend himself with a spear . . . [you may kill him] and shall make hue and cry.

14, 15. [Missing or fragmentary. Deal with theft.]

16. If he does a theft but he is not detected in the act . . . [double value shall be paid].

17–20. [Missing. Deal further with theft.]

21. If a patron defrauds a client, he shall be accursed.

22. He who has promised to bear witness or has acted as weigher, if he bear not testimony [when required], shall be deemed a miscreant and disqualified thereafter to be a witness.

23. [Missing. False witness shall be cast from the Tarpeian Rock.]

24. If a spear escape from the hand, without being thrown, . . . [and kill another person, atonement shall be made].

25–27. [Missing. Deal with poisoning, night brawls, etc.]

IX

1–6. [Missing. Deal further with homicide, criminal proceedings, etc.]

X

1. A dead man you shall not bury or burn within the city.

2. [Funeral trappings and expenses may be . . .] more than this you shall not do. The pyre-wood shall not be smoothed with an axe.

3. [Missing. Deals with garments, etc.]

4. Women shall not tear their faces, nor make excessive lamentation for the dead.

5. You shall not take up the bones of a dead man to have another funeral.

6. [Missing.]

7. He who obtains a prize, whether in person or by his property,[1] or earns a reward of valor, . . . [these may be buried with him].

8. [Jewels, silver], . . . or gold shall not be included [in the funeral corse]. But if the deceased's teeth are filled with gold, that may be buried or burned with him, and it shall not be accounted wrongful.

9, 10. [Missing. Deal with tombs, etc.]

XI

1–3. [Missing. Deal with the calendar, holidays, intermarriage of plebs and patricianate.]

XII

1. [Missing. Deals with sale-contracts, etc.]

2. [Fragment, dealing with harm done by slaves.]

3. If a man has made [and won] a false claim of property, . . . three arbiters be named, and on their judgment . . . double damages shall be awarded.

[1] *I.e.*, slaves or horses, in races, etc.

Chapter XIX

THE LAWS OF MANU[1]

CHAPTER VIII. JUDICIAL PROCEDURE. — RECOVERY OF DEBTS. — WITNESSES. — WEIGHTS. — DEPOSITS. — SALE WITHOUT OWNERSHIP. — CONCERNS AMONG PARTNERS. — SUBTRACTION OF GIFTS. — NON-PAYMENT OF WAGES. — NON-PERFORMANCE OF AGREEMENT. — RESCISSION OF SALE AND PURCHASE. — MASTERS AND HERDSMEN. — DISPUTES CONCERNING BOUNDARIES. — DEFAMATION. — ASSAULT AND HURT. — THEFT. — VIOLENCE (SAHASA). — MISCELLANEOUS RULES.

1. A king, desirous of investigating law cases, must enter his court of justice, preserving a dignified demeanor, together with Brâhmaṇas and with experienced councillors.

2. There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, let him examine the business of suitors.

3. Daily (deciding) one after another (all cases) which fall under the eighteen titles (of the law) according to principles drawn from local usages and from the institutes of the sacred law.

4. Of those (titles) the first is the non-payment of debts, (then follow), (2) deposit and pledge, (3) sale without ownership, (4) concerns among partners, and (5) resumption of gifts,

5. (6) Non-payment of wages, (7) non-performance of agreements, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and his servants,

[1] [Reprinted by permission of the University of Oxford Press from "The Laws of Manu," translated with extracts from "Seven Commentaries," by G. Bühler, Oxford, 1886. (Being Vol. XXV of the "Sacred Books of the East" translated by Various Oriental Scholars, and edited by F. Max Müller.)

The present form of this code is thought to date about 200 B.C., although these laws are probably much more ancient. Approximately a quarter of the code deals with matters strictly legal in nature; the remainder, like all other ancient codes, lays down rules of religion, ceremony, deportment, health, etc., as of equal importance. Other well-known sources of Hindu Law are the Smriti of Yajnavalkya and the Smriti of Narada, which, in the order named, are subsequent in time to the Laws of Manu.]

6. (10) Disputes regarding boundaries, (11) assault and (12) defamation, (13) theft, (14) robbery and violence, (15) adultery,

7. (16) Duties of man and wife, (17) partition (of inheritance), (18) gambling and betting; these are in this world the eighteen topics which give rise to lawsuits.

8. Depending on the eternal law, let him decide the suits of men who mostly contend on the titles just mentioned.

9. But if the king does not personally investigate the suits, then let him appoint a learned Brâhmaṇa to try them.

10. That (man) shall enter that most excellent court, accompanied by three assessors, and fully consider (all) causes (brought) before the (king), either sitting down or standing.

11. Where three Brâhmaṇas versed in the Vedas and the learned (judge) appointed by the king sit down, they call that the court of (four-faced) Brahman.

12. But where justice, wounded by injustice, approaches and the judges do not extract the dart, there (they also) are wounded (by that dart of injustice).

13. Either the court must not be entered, or the truth must be spoken; a man who either says nothing or speaks falsely, becomes sinful.

14. Where justice is destroyed by injustice, or truth by falsehood, while the judges look on, there they shall also be destroyed.

15. "Justice, being violated, destroys; justice, being preserved, preserves; therefore, justice must not be violated, lest violated justice destroy us."

16. For divine justice (is said to be) a bull (vṛisha); that (man) who violates it (kurute 'lam) the gods consider to be (a man despicable like) a Śûdra (vṛishala); let him, therefore, beware of violating justice.

17. The only friend who follows men even after death is justice; for everything else is lost at the same time when the body (perishes).

18. One quarter of (the guilt of) an unjust (decision) falls on him who committed (the crime), one quarter on the (false) witness, one quarter on all the judges, one quarter on the king.

19. But where he who is worthy of condemnation is condemned, the king is free from guilt, and the judges are saved (from sin); the guilt falls on the perpetrator (of the crime alone).

20. A Brâhmaṇa who subsists only by the name of his caste (gâti), or one who merely calls himself a Brâhmaṇa (though his

origin be uncertain), may, at the king's pleasure, interpret the law to him, but never a Śûdra.

21. The kingdom of that monarch, who looks on while a Śûdra settles the law, will sink (low), like a cow in a morass.

22. That kingdom where Śûdras are very numerous, which is infested by atheists and destitute of twice-born (inhabitants), soon entirely perishes, afflicted by famine and disease.

23. Having occupied the seat of justice, having covered his body, and having worshipped the guardian deities of the world, let him, with a collected mind, begin the trial of causes.

24. Knowing what is expedient or inexpedient, what is pure justice or injustice, let him examine the causes of suitors according to the order of the castes (varṇa).

25. By external signs let him discover the internal disposition of men, by their voice, their colour, their motions, their aspect, their eyes, and their gestures.

26. The internal (working of the) mind is perceived through the aspect, the motions, the gait, the gestures, the speech, and the changes in the eye and of the face.

27. The king shall protect the inherited (and other) property of a minor, until he has returned (from his teacher's house) or until he has passed his minority.

28. In like manner care must be taken of barren women, of those who have no sons, of those whose family is extinct, of wives and widows faithful to their lords, and of women afflicted with diseases.

29. A righteous king must punish like thieves those relatives who appropriate the property of such females during their lifetime.

30. Property, the owner of which has disappeared, the king shall cause to be kept as a deposit during three years; within the period of three years the owner may claim it, after (that term) the king may take it.

31. He who says "That belongs to me," must be examined according to the rule; if he accurately describes the shape, and the number (of the articles found) and so forth, (he is) the owner, (and) ought (to receive) the property.

32. But if he does not really know the time and the place (where it was) lost, its colour, shape, and size, he is worthy of a fine equal (in value) to the (object claimed).

33. Now the king, remembering the duty of good men, may take one-sixth part of property lost and afterwards found, or one-tenth, or at least one-twelfth.

34. Property lost and afterwards found (by the king's servants) shall remain in the keeping of (special) officials; those whom the king may convict of stealing it, he shall cause to be slain by an elephant.

35. From that man who shall truly say with respect to treasure-trove, "This belongs to me," the king may take one-sixth or one-twelfth part.

36. But he who falsely says (so), shall be fined in one-eighth of his property, or, a calculation of (the value of) the treasure having been made, in some smaller portion (of that).

37. When a learned Brâhmaṇa has found treasure, deposited in former (times), he may take even the whole (of it); for he is master of everything.

38. When the king finds treasure of old concealed in the ground, let him give one half to Brâhmaṇas and place the (other) half in his treasury.

39. The king obtains one half of ancient hoards and metals (found) in the ground, by reason of (his giving) protection, (and) because he is the lord of the soil.

40. Property stolen by thieves must be restored by the king to (men of) all castes (varṇa); a king who uses such (property) for himself incurs the guilt of a thief.

41. (A king) who knows the sacred law, must inquire into the laws of castes (gâti), of districts, of guilds, and of families, and (thus) settle the peculiar law of each.

42. For men who follow their particular occupations and abide by their particular duty, become dear to people, though they may live at a distance.

43. Neither the king nor any servant of his shall themselves cause a lawsuit to be begun, or hush up one that has been brought (before them) by (some) other (man).

44. As a hunter traces the lair of a (wounded) deer by the drops of blood, even so the king shall discover on which side the right lies, by inferences (from the facts).

45. When engaged in judicial proceedings he must pay full attention to the truth, to the object (of the dispute), (and) to himself, next to the witnesses, to the place, to the time, and to the aspect.

46. What may have been practised by the virtuous, by such twice-born men as are devoted to the law, that he shall establish as law, if it be not opposed to the (customs of) countries, families, and castes (gâti).

47. When a creditor sues (before the king) for the recovery of money from a debtor, let him make the debtor pay the sum which the creditor proves (to be due).

48. By whatever means a creditor may be able to obtain possession of his property, even by those means may he force the debtor and make him pay.

49. By moral suasion, by suit of law, by artful management, or by the customary proceeding, a creditor may recover property lent; and fifthly, by force.

50. A creditor who himself recovers his property from his debtor, must not be blamed by the king for retaking what is his own.

51. But him who denies a debt which is proved by good evidence, he shall order to pay that debt to the creditor and a small fine according to his circumstances.

52. On the denial (of a debt) by a debtor who has been required in court to pay it, the complainant must call (a witness) who was present (when the loan was made), or adduce other evidence.

53. (The plaintiff) who calls a witness not present at the transaction, who retracts his statements, or does not perceive that his statements (are) confused or contradictory;

54. Or who having stated what he means to prove afterwards varies (his case), or who being questioned on a fact duly stated by himself does not abide by it;

55. Or who converses with the witnesses in a place improper for such conversation; or who declines to answer a question, properly put, or leaves (the court);

56. Or who, being ordered to speak, does not answer, or does not prove what he has alleged; or who does not know what is the first (point), and what the second, fails in his suit.

57. Him also who says "I have witnesses," and, being ordered to produce them, produces them not, the judge must on these (same) grounds declare to be non-suited.

58. If a plaintiff does not speak, he may be punished corporally or fined according to the law; if (a defendant) does not plead within three fortnights, he has lost his cause.

59. In the double of that sum which (a defendant) falsely denies or on which (the plaintiff) falsely declares, shall those two (men) offending against justice be fined by the king.

60. (A defendant) who, being brought (into court) by the creditor, (and) being questioned, denies (the debt) shall be convicted (of his falsehood) by at least three witnesses (who must depose) in the presence of the Brâhmaṇa (appointed by) the king.

61. I will fully declare what kind of men may be made witnesses in suits by creditors, and in what manner those (witnesses) must give true (evidence).

62. Householders, men with male issue, and indigenous (inhabitants of the country, be they) Kshatriyas, Vaiśyas, or Śûdras, are competent, when called by a suitor, to give evidence, not any persons whatever (their condition may be) except in cases of urgency.

63. Trustworthy men of all the (four) castes (varṇa) may be made witnesses in lawsuits, (men) who know (their) whole duty, and are free from covetousness; but let him reject those (of an) opposite (character).

64. Those must not be made (witnesses) who have an interest in the suit, nor familiar (friends), companions, and enemies (of the parties), nor (men) formerly convicted (of perjury), nor (persons) suffering under (severe) illness, nor (those) tainted (by mortal sin).

65. The king cannot be made a witness, nor mechanics and actors, nor a Śrotriya, nor a student of the Veda, nor (an ascetic) who has given up (all) connexion (with the world).

66. Nor one wholly dependent, nor one of bad fame, nor a Dasyu, nor one who follows forbidden occupations, nor an aged (man), nor an infant, nor one (man alone), nor a man of the lowest castes, nor one deficient in organs of sense.

67. Nor one extremely grieved, nor one intoxicated, nor a madman, nor one tormented by hunger or thirst, nor one oppressed by fatigue, nor one tormented by desire, nor a wrathful man, nor a thief.

68. Women should give evidence for women, and for twice-born men twice-born men (of the) same (kind), virtuous Śûdras for Śûdras, and men of the lowest castes for the lowest.

69. But any person whatsoever, who has personal knowledge (of an act committed) in the interior apartments (of a house), or in a forest, or of (a crime causing) loss of life, may give evidence between the parties.

70. On failure (of qualified witnesses, evidence) may be given (in such cases) by a woman, by an infant, by an aged man, by a pupil, by a relative, by a slave, or by a hired servant.

71. But the (judge) should consider the evidence of infants, aged and diseased men, who (are apt to) speak untruly, as untrustworthy, likewise that of men with disordered minds.

72. In all cases of violence, of theft and adultery, of defamation

and assault, he must not examine the (competence of) witnesses (too strictly).

73. On a conflict of the witnesses the king shall accept (as true) the (evidence of the) majority; if (the conflicting parties are) equal in number, (that of) those distinguished by good qualities; on a difference between (equally) distinguished (witnesses, that of) the best among the twice-born.

74. Evidence in accordance with what has actually been seen or heard, is admissible; a witness who speaks truth in those (cases), neither loses spiritual merit nor wealth.

75. A witness who deposes in an assembly of honourable men (Ârya) anything else but what he has seen or heard, falls after death headlong into hell and loses heaven.

76. When a man (originally) not appointed to be a witness sees or hears anything and is (afterwards) examined regarding it, he must declare it (exactly) as he saw or heard it.

77. One man who is free from covetousness may be (accepted as) witness; but not even many pure women, because the understanding of females is apt to waver, nor even many other men, who are tainted with sin.

78. What witnesses declare quite naturally, that must be received on trials; (depositions) differing from that, which they make improperly, are worthless for (the purposes of) justice.

79. The witnesses being assembled in the court in the presence of the plaintiff and of the defendant, let the judge examine them, kindly exhorting them in the following manner:

80. "What ye know to have been mutually transacted in this matter between the two men before us, declare all that in accordance with the truth; for ye are witnesses in this (cause).

81. "A witness who speaks the truth in his evidence, gains (after death) the most excellent regions (of bliss) and here (below) unsurpassable fame; such testimony is revered by Brahman (himself).

82. "He who gives false evidence is firmly bound by Varuṇa's fetters, helpless during one hundred existences; let (men therefore) give true evidence.

83. "By truthfulness a witness is purified, through truthfulness his merit grows; truth must, therefore, be spoken by witnesses of all castes (varṇa).

84. "The Soul itself is the witness of the Soul, and the Soul is the refuge of the Soul; despise not thy own Soul, the supreme witness of men.

85. "The wicked, indeed, say in their hearts, 'Nobody sees us'; but the gods distinctly see them and the male within their own breasts.

86. "The sky, the earth, the waters, (the male in) the heart, the moon, the sun, the fire, Yama, and the wind, the night, the two twilights, and justice know the conduct of all corporeal beings."

87. The (judge), being purified, shall ask in the forenoon the twice-born (witnesses) who (also have been) purified, (and stand) facing the north or the east, to give true evidence in the presence of (images of) the gods and of Brâhmaṇas.

88. Let him examine a Brâhmaṇa (beginning with) "Speak," a Kshatriya (beginning with) "Speak the truth," a Vaiśya (admonishing him) by (mentioning) his kine, grain, and gold, a Śûdra (threatening him) with (the guilt of) every crime that causes loss of caste;

89. (Saying), "Whatever places (of torment) are assigned (by the sages) to the slayer of a Brâhmaṇa, to the murderer of women and children, to him who betrays a friend, and to an ungrateful man, those shall be thy (portion), if thou speakest falsely.

90. "(The reward) of all meritorious deeds which thou, good man, hast done since thy birth, shall become the share of the dogs, if in thy speech thou departest from the truth.

91. "If thou thinkest, O friend of virtue, with respect to thyself, 'I am alone,' (know that) that sage who witnesses all virtuous acts and all crimes, ever resides in thy heart.

92. "If thou art not at variance with that divine Yama, the son of Vivasvat, who dwells in thy heart, thou needest neither visit the Ganges nor the (land of the) Kurus.

93. "Naked and shorn, tormented with hunger and thirst, and deprived of sight, shall the man who gives false evidence, go with a potsherd to beg food at the door of his enemy.

94. "Headlong, in utter darkness shall the sinful man tumble into hell, who being interrogated in a judicial inquiry answers one question falsely.

95. "That man who in a court (of justice) gives an untrue account of a transaction (or asserts a fact) of which he was not an eye-witness, resembles a blind man who swallows fish with the bones.

96. "The gods are acquainted with no better man in this world than him, of whom his conscious Soul has no distrust, when he gives evidence.

97. "Learn now, O friend, from an enumeration in due order, how many relatives he destroys who gives false evidence in several particular cases.

98. "He kills five by false testimony regarding (small) cattle, he kills ten by false testimony regarding kine, he kills a hundred by false evidence concerning horses, and a thousand by false evidence concerning men.

99. "By speaking falsely in a cause regarding gold, he kills the born and the unborn; by false evidence concerning land, he kills everything; beware, therefore, of false evidence concerning land.

100. "They declare (false evidence) concerning water, concerning the carnal enjoyment of women, and concerning all gems, produced in water, or consisting of stones (to be) equally (wicked) as a lie concerning land.

101. "Marking well all the evils (which are produced) by perjury, declare thou openly everything as (thou hast) heard or seen (it)."

102. Brâhmaṇas who tend cattle, who trade, who are mechanics, actors (or singers), menial servants or usurers, the (judge) shall treat like Śûdras.

103. In (some) cases a man who, though knowing (the facts to be) different, gives such (false evidence) from a pious motive, does not lose heaven; such (evidence) they call the speech of the gods.

104. Whenever the death of a Śûdra, of a Vaiśya, of a Kshatriya, or of a Brâhmaṇa would be (caused) by a declaration of the truth, a falsehood may be spoken; for such (falsehood) is preferable to the truth.

105. Such (witnesses) must offer to Sarasvati oblations of boiled rice (karu) which are sacred to the goddess of speech, (thus) performing the best penance in order to expiate the guilt of that falsehood.

106. Or such (a witness) may offer according to the rule clarified butter in the fire, reciting the Kûshmaṇḍa texts, or the Rik sacred to Varuṇa, "Untie, O Varuṇa, the uppermost fetter;" or the three verses addressed to the Waters.

107. A man who, without being ill, does not give evidence in (cases of) loans and the like within three fortnights (after the summons), shall become responsible for the whole debt and (pay) a tenth part of the whole (as a fine to the king).

108. The witness to whom, within seven days after he has given evidence, happens (a misfortune through) sickness, a fire, or the death of a relative, shall be made to pay the debt and a fine.

109. If two (parties) dispute about matters for which no witnesses are available, and the (judge) is unable to really ascertain the truth, he may cause it to be discovered even by an oath.

110. Both by the great sages and the gods oaths have been taken for the purpose of (deciding doubtful) matters; and Vasishtha even swore an oath before king (Sudâs), the son of Pigavana.

111. Let no wise man swear an oath falsely, even in a trifling matter; for he who swears an oath falsely is lost in this (world) and after death.

112. No crime, causing loss of caste, is committed by swearing (falsely) to women, the objects of one's desire, at marriages, for the sake of fodder for a cow, or of fuel, and in (order to show) favour to a Brâhmana.

113. Let the (judge) cause a Brâhmana to swear by his veracity, a Kshatriya by his chariot or the animal he rides on and by his weapons, a Vaisya by his kine, grain, and gold, and a Sûdra by (imprecating on his own head the guilt) of all grievous offences (pâtaka).

114. Or the (judge) may cause the (party) to carry fire or to dive under water, or severally to touch the heads of his wives and children.

115. He whom the blazing fire burns not, whom the water forces not to come (quickly) up, who meets with no speedy misfortune, must be held innocent on (the strength of) his oath.

116. For formerly when Vatsa was accused by his younger brother, the fire, the spy of the world, burned not even a hair (of his) by reason of his veracity.

117. Whenever false evidence has been given in any suit, let the (judge) reverse the judgment, and whatever has been done must be (considered as) undone.

118. Evidence (given) from covetousness, distraction, terror, friendship, lust, wrath, ignorance, and childishness is declared (to be) invalid.

119. I will propound in (due) order the particular punishments for him who gives false evidence from any one of these motives.

120. (He who commits perjury) through covetousness shall be fined one thousand (panas), (he who does it) through distraction, in the lowest amercement; (if a man does it) through fear, two middling amercements shall be paid as a fine, (if he does it) through friendship, four times the amount of the lowest (amercement).

121. (He who does it) through lust, (shall pay) ten times the

lowest amercement, but (he who does it) through wrath, three times the next (or second amercement); (he who does it) through ignorance, two full hundreds, but (he who does it) through childishness, one hundred (panas).

122. They declare that the wise have prescribed these fines for perjury, in order to prevent a failure of justice, and in order to restrain injustice.

123. But as a just king shall fine and banish (men of) the three (lower) castes (varna) who have given false evidence, but a Brâhmana he shall (only) banish.

124. Manu, the son of the Self-existent (Svayambhu), has named ten places on which punishment may be (made to fall) in the cases of the three (lower) castes (varna); but a Brâhmana shall depart unhurt (from the country).

125. (These are) the organ, the belly, the tongue, the two hands, and fifthly the two feet, the eye, the nose, the two ears, likewise the (whole) body.

126. Let the (king), having fully ascertained the motive, the time and place (of the offence), and having considered the ability (of the criminal to suffer) and the (nature of the) crime, cause punishment to fall on those who deserve it.

127. Unjust punishment destroys reputation among men, and fame (after death), and causes even in the next world the loss of heaven; let him, therefore, beware of (inflicting) it.

128. A king who punishes those who do not deserve it, and punishes not those who deserve it, brings great infamy on himself and (after death) sinks into hell.

129. Let him punish first by (gentle) admonition, afterwards by (harsh) reproof, thirdly by a fine, after that by corporal chastisement.

130. But when he cannot restrain such (offenders) even by corporal punishment, then let him apply to them even all the four (modes conjointly).

131. Those technical names of (certain quantities of) copper, silver, and gold, which are generally used on earth, for the purpose of business transactions among men, I will fully declare.

132. The very small mote which is seen when the sun shines through a lattice, they declare (to be) the least of (all) quantities and (to be called) a trasarenu (a floating particle of dust).

133. Know (that) eight trasarenus (are equal) in bulk (to) a likshâ (the egg of a louse), three of those to one grain of black mustard (râgasarshapa), and three of the latter to a white mustard-seed.

134. Six grains of white mustard are one middle-sized barley-corn, and three barley-corns one krishnala (rahtikâ, or guñga-berry); five krishnalas are one mâsha (bean), and sixteen of those one suvarna.

135. Four suvarnas are one pala, and ten palas one dharana; two krishnalas (of silver), weighed together, must be considered one mâshaka of silver.

136. Sixteen of those make a silver dharana, or purâna; but know (that) a karsha of copper is a kârshâpana, or pana.

137. Know (that) ten dharanas of silver make one satamâna; four suvarnas must be considered (equal) in weight to a nishka.

138. Two hundred and fifty panas are declared (to be) the first (or lowest) amercement, five (hundred) are considered as the mean (or middlemost), but one thousand as the highest.

139. A debt being admitted as due, (the defendant) shall pay five in the hundred (as a fine), if it be denied (and proved) twice as much; that is the teaching of Manu.

140. A money-lender may stipulate as an increase of his capital, for the interest, allowed by Vasishtha, and take monthly the eightieth part of a hundred.

141. Or, remembering the duty of good men, he may take two in the hundred (by the month), for he who takes two in the hundred becomes not a sinner for gain.

142. Just two in the hundred, three, four, and five (and not more), he may take as monthly interest according to the order of the castes (varna).

143. But if a beneficial pledge (*i.e.* one from which profit accrues, has been given), he shall receive no interest on the loan; nor can he, after keeping (such) a pledge for a very long time, give or sell it.

144. A pledge (to be kept only) must not be used by force, (the creditor), so using it, shall give up his (whole) interest, or, (if it has been spoilt by use) he shall satisfy the (owner) by (paying its) original price; else he commits a theft of the pledge.

145. Neither a pledge nor a deposit can be lost by lapse of time; they are both recoverable, though they have remained long (with the bailee).

146. Things used with friendly assent, a cow, a camel, a riding-horse, and (a beast) made over for breaking in, are never lost (to the owner).

147. (But in general) whatever (chattel) an owner sees enjoyed

by others during ten years, while, though present, he says nothing, that (chattel) he shall not recover.

148. If (the owner is) neither an idiot nor a minor and if (his chattel) is enjoyed (by another) before his eyes, it is lost to him by law; the adverse possessor shall retain that property.

149. A pledge, a boundary, the property of infants, an (open) deposit, a sealed deposit, women, the property of the king and the wealth of a Srotriya was not lost in consequence of (adverse) enjoyment.

150. The fool who uses a pledge without the permission of the owner, shall remit half of his interest, as a compensation for (such) use.

151. In money transactions interest paid at one time (not by instalments) shall never exceed the double (of the principal); on grain, fruit, wool or hair, (and) beasts of burden it must not be more than five times (the original amount).

152. Stipulated interest beyond the legal rate, being against (the law), cannot be recovered; they call that a usurious way (of lending); (the lender) is (in no case) entitled to (more than) five in the hundred.

153. Let him not take interest beyond the year, nor such as is unapproved, nor compound interest, periodical interest, stipulated interest, and corporal interest.

154. He who, unable to pay a debt (at the fixed time), wishes to make a new contract, may renew the agreement, after paying the interest which is due.

155. If he cannot pay the money (due as interest), he may insert it in the renewed (agreement); he must pay as much interest as may be due.

156. He who has made a contract to carry goods by a wheeled carriage for money and has agreed to a certain place or time, shall not reap that reward, if he does not keep to the place and the time (stipulated).

157. Whatever rate men fix, who are expert in sea-voyages and able to calculate (the profit) according to the place, the time, and the objects (carried), that (has legal force) in such cases with respect to the payment (to be made).

158. The man who becomes a surety in this (world) for the appearance of a (debtor), and produces him not, shall pay the debt out of his own property.

159. But money due by a surety, or idly promised, or lost at play, or due for spirituous liquor, or what remains unpaid of a fine

and a tax or duty, the son (of the party owing it) shall not be obliged to pay.

160. This just mentioned rule shall apply to the case of a surety for appearance (only); if a surety for payment should die, the (judge) may compel even his heirs to discharge the debt.

161. On what account then is it that after the death of a surety other than for payment, whose affairs are fully known, the creditor may (on some cases) afterwards demand the debt (of the heirs)?

162. If the surety had received money (from him for whom he stood bail) and had money enough (to pay), then (the heir of him) who received it, shall pay (the debt) out of his property; that is the settled rule.

163. A contract made by a person intoxicated, or insane, or grievously disordered (by disease and so forth), or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.

164. That agreement which has been made contrary to the law or to the settled usage (of the virtuous), can have no legal force, though it be established (by proofs).

165. A fraudulent mortgage or sale, a fraudulent gift or acceptance, and (any transaction) where he detects fraud, the (judge) shall declare null and void.

166. If the debtor be dead and (the money borrowed) was expended for the family, it must be paid by the relatives out of their own estate even if they are divided.

167. Should even a person wholly dependent make a contract for the behoof of the family, the master (of the house), whether (living) in his own country or abroad, shall not rescind it.

168. What is given by force, what is enjoyed by force, also what has been caused to be written by force, and all other transactions done by force, Manu has declared void.

169. Three suffer for the sake of others, witnesses, a surety and judges; but four enrich themselves (through others), a Brâhmaṇa, a money-lender, a merchant, and a king.

170. No king, however indigent, shall take anything that ought not to be taken, nor shall he, however wealthy, decline taking that which he ought to take, be it ever so small.

171. In consequence of his taking what ought not to be taken, or of his refusing what ought to be received, a king will be accused of weakness and perish in this (world) and after death.

172. By taking his due, by preventing the confusion of the

castes (varṇa), and by protecting the weak, the power of the king grows, and he prospers in this (world) and after death.

173. Let the prince, therefore, like Yama, not heeding his own likings and dislikings, behave exactly like Yama, suppressing his anger and controlling himself.

174. But that evil-minded king who in his folly decides causes unjustly, his enemies soon subjugate.

175. If, subduing love and hatred, he decides the causes according to the law, (the hearts of) his subjects turn towards him as the rivers (run) towards the ocean.

176. (The debtor) who complains to the king that his creditor recovers (the debt) independently (of the court), shall be compelled by the king to pay (as a fine) one quarter (of the sum) and to his (creditor) the money (due).

177. Even by (personal) labour shall the debtor make good (what he owes) to his creditor, if he be of the same caste or of a lower one; but a (debtor) of a higher caste shall pay it gradually (when he earns something).

178. According to these rules let the king equitably decide between men, who dispute with each other the matters, which are proved by witnesses and (other) evidence.

179. A sensible man should make a deposit (only) with a person of (good) family, of good conduct, well acquainted with the law, veracious, having many relatives, wealthy, and honourable (ârya).

180. In whatever manner a person shall deposit anything in the hands of another, in the same manner ought the same thing to be received back (by the owner); as the delivery (was, so must be) the re-delivery.

181. He who restores not his deposit to the depositor at his request, may be tried by the judge in the depositor's absence.

182. On failure of witnesses let the (judge) actually deposit gold with that (defendant) under some pretext or other through spies of suitable age and appearance (and afterwards demand it back).

183. If the (defendant) restores it in the manner and shape in which it was bailed, there is nothing (of that description) in his hands, for which others accuse him.

184. But if he restores not that gold, as he ought, to those (spies), then he shall be compelled by force to restore both (deposits); that is a settled rule of law.

185. An open or a sealed deposit must never be returned to a

near relative (of the depositor during the latter's lifetime); for if (the recipient) dies (without delivering them), they are lost, but if he does not die, they are not lost.

186. But (a depositary) who of his own accord returns them to a near relative of a deceased (depositor), must not be harassed (about them) by the king or by the depositor's relatives.

187. And (in doubtful cases) he should try to obtain that object by friendly means, without (having recourse to) artifice, or having inquired into the (depositary's) conduct, he should settle (the matter) with gentle means.

188. Such is the rule for obtaining back all those open deposits; in the case of a sealed deposit (the depositary) shall incur no (censure), unless he has taken out something.

189. (A deposit) which has been stolen by thieves or washed away by water or burned by fire, (the bailee) shall not make it good, unless he took part of it (for himself).

190. Him who appropriates a deposit and him (who asks for it) without having made it, (the judge) shall try by all (sorts of) means, and by the oaths prescribed in the Veda.

191. He who does not return a deposit and he who demands what he never bailed shall both be punished like thieves, or be compelled to pay a fine equal (to the value of the object retained or claimed).

192. The king should compel him who does not restore an open deposit, and in like manner him who retains a sealed deposit, to pay a fine equal (to its value).

193. That man who by false pretences may possess himself of another's property, shall be publicly punished by various (modes of) corporal (or capital) chastisement, together with his accomplices.

194. If a deposit of a particular description or quantity is bailed by anybody in the presence of a number (of witnesses) it must be known to be of that particular (description and quantity; the depositary) who makes a false statement (regarding it) is liable to a fine.

195. But if anything is delivered or received privately, it must be privately returned; as the bailment (was, so should be) the re-delivery.

196. Thus let the king decide (causes) concerning a deposit and a friendly loan (for use) without showing (undue) rigour to the depositary.

197. If anybody sells the property of another man, without being the owner and without the assent of the owner, the (judge)

shall not admit him who is a thief, though he may not consider himself a thief, as a witness (in any case).

198. If the (offender) is a kinsman (of the owner), he shall be fined six hundred panas; if he is not a kinsman, nor has any excuse, he shall be guilty of theft.

199. A gift of sale, made by anybody else but the owner, must be considered as null and void, according to the rule in judicial proceedings.

200. Where possession is evident, but no title is perceived, there the title (shall be) a proof (of ownership), not possession; such is the settled rule.

201. He who obtains a chattel in the market before a number (of witnesses), acquires that chattel with a clear legal title by purchase.

202. If the original (seller) be not producible, (the buyer) being exculpated by a public sale, must be dismissed by the king without punishment, but (the former owner) who lost the chattel shall receive it (back from the buyer).

203. One commodity mixed with another must not be sold (as pure), nor a bad one (as good), nor less (than the proper quantity or weight), nor anything that is not at hand or that is concealed.

204. If, after one damsel has been shown, another be given to the bridegroom, he may marry them both for the same price; that Manu ordained.

205. He who gives (a damsel in marriage), having first openly declared her blemishes, whether she be insane, or afflicted with leprosy, or have lost her virginity, is not liable to punishment.

206. If an officiating priest, chosen to perform a sacrifice, abandons his work, a share only (of the fee) in proportion to the work (done) shall be given to him by those who work with him.

207. But he who abandons his work after the sacrificial fees have been given, shall obtain his full share and cause to be performed (what remains) by another (priest).

208. But if (specific) fees are ordained for the several parts of a rite, shall he (who performs the part) receive them, or shall they all share them?

209. The Adhvaryu priest shall take the chariot, and the Brahman at the kindling of the fires (Agnyâdhâna) a horse, the Hotri priest shall also take a horse and the Udgâtri the cart, (used) when (the Soma) is purchased.

210. The (four) chief priests among all (the sixteen), who are entitled to one half, shall receive a moiety (of the fee), the next

(four) one half of that, the set entitled to a third share, one third, and those entitled to a fourth a quarter.

211. By the application of these principles the allotment of shares must be made among those men who here (below) perform their work conjointly.

212. Should money be given (or promised) for a pious purpose by one man to another who asks for it, the gift shall be void, if the (money is) afterwards not (used) in the manner (stated).

213. But if the (recipient) through pride or greed tries to enforce (the fulfilment of the promise), he shall be compelled by the king to pay one suvarṇa as an expiation for his theft.

214. Thus the lawful subtraction of a gift has been fully explained; I will next propound (the law for) the non-payment of wages.

215. A hired (servant or workman) who, without being ill, out of pride fails to perform his work according to the agreement, shall be fined eight kṛishṇalas and no wages shall be paid to him.

216. But (if he is really) ill, (and) after recovery performs (his work) according to the original agreement, he shall receive his wages even after (the lapse of) a very long time.

217. But if he, whether sick or well, does not (perform or) cause to be performed (by others) his work according to his agreement, the wages for that work shall not be given to him, even (if it be only) slightly incomplete.

218. Thus the law for the non-payment of wages has been completely stated; I will next explain the law concerning men who break an agreement.

219. If a man belonging to a corporation inhabiting a village or a district, after swearing to an agreement, breaks it through avarice, (the king) shall banish him from his realm.

220. And having imprisoned such a breaker of an agreement, he shall compel him to pay six nishkas, (each of) four suvarṇas, and one śatamâna of silver.

221. A righteous king shall apply this law of fines in villages and castes (gâti) to those who break an agreement.

222. If anybody in this (world), after buying or selling anything, repent (of his bargain), he may return or take (back) that chattel within ten days.

223. But after (the lapse of) ten days he may neither give nor cause it to be given (back); both he who takes it (back) and he who gives it (back, except by consent) shall be fined by the king six hundred (paṇas).

224. But the king himself shall impose a fine of ninety-six panas on him who gives a blemished damsel (to a suitor) without informing (him of the blemish).

225. But that man who, out of malice, says of a maiden, "She is not a maiden," shall be fined one hundred (panas), if he cannot prove her blemish.

226. The nuptial texts are applied solely to virgins, (and) nowhere among men to females who have lost their virginity, for such (females) are excluded from religious ceremonies.

227. The nuptial texts are a certain proof (that a maiden has been made a lawful) wife; but the learned should know that they (and the marriage-ceremony) are complete with the seventh step (of the bride around the sacred fire).

228. If anybody in this (world) repent of any completed transactions, (the king) shall keep him on the road of rectitude in accordance with the rules given above.

229. I will fully declare in accordance with the true law (the rules concerning) the disputes, (arising) from the transgressions of owners of cattle and of herdsmen.

230. During the day the responsibility for the safety (of the cattle rests) on the herdsman, during the night on the owner, (provided they are) in his house; (if it be) otherwise, the herdsman will be responsible (for them also during the night).

231. A hired herdsman who is paid with milk, may milk with the consent of the owner the best (cow) out of ten; such shall be his hire if no (other) wages (are paid).

232. The herdsman alone shall make good (the loss of a beast) strayed, destroyed by worms, killed by dogs or (by falling) into a pit, if he did not duly exert himself to (prevent it).

233. But for (an animal) stolen by thieves, though he raised an alarm, the herdsman shall not pay, provided he gives notice to his master at the proper place and time.

234. If cattle die, let him carry to his master their ears, skin, tails, bladders, tendons, and the yellow concrete bile, and let him point out their particular marks.

235. But if goats or sheep are surrounded by wolves and the herdsman does not hasten (to their assistance), he shall be responsible for any (animal) which a wolf may attack and kill.

236. But if they, kept in (proper) order, graze together in the forest, and a wolf, suddenly jumping on one of them, kills it, the herdsman shall bear in that case no responsibility.

237. On all sides of a village, a space, one hundred dhanus or

three samya-throws (in breadth), shall be reserved (for pasture), and thrice (that space) round a town.

238. If the cattle do damage to unfenced crops on that (common), the king shall in that case not punish the herdsmen.

239. (The owner of the field) shall make there a hedge over which a camel cannot look, and stop every gap through which a dog or a boar can thrust his head.

240. (If cattle do mischief) in an enclosed field near a highway or near a village, the herdsman shall be fined one hundred (panas); (but cattle), unattended by a herdsman, (the watchman in the field) shall drive away.

241. (For damage) in other fields (each head of) cattle shall (pay a fine of) one (pana) and a quarter, and in all (cases the value of) the crop (destroyed) shall be made good to the owner of the field; that is the settled rule.

242. But Manu has declared that no fine shall be paid for (damage done by) a cow within ten days after her calving, by bulls and by cattle sacred to the gods, whether they are attended by a herdsman or not.

243. If (the crops are destroyed by) the husbandman's (own) fault, the fine shall amount to ten times as much as (the king's) share; but the fine (shall be) only half that amount if (the fault lay) with the servants and the farmer had no knowledge of it.

244. To these rules a righteous king shall keep in (all cases of) transgressions by masters, their cattle, and herdsmen.

245. If a dispute has arisen between two villages concerning a boundary, the king shall settle the limits in the month of Gyaishtha, when the landmarks are most distinctly visible.

246. Let him mark the boundaries (by) trees, (*e.g.*) Nyagrodhas, Asvatthas, Kimsukas, cotton-trees, Salas, Palmyra palms, and trees with milky juice.

247. By clustering shrubs, bamboos of different kinds, Samis, creepers and raised mounds, reeds, thickets of Kubgaka; thus the boundary will not be forgotten.

248. Tanks, wells, cisterns, and fountains should be built where boundaries meet, as well as temples,

249. And as he will see that through men's ignorance of the boundaries trespasses constantly occur in the world, let him cause to be made other hidden marks for boundaries,

250. Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung, bricks, cinders, pebbles, and sand,

251. And whatever other things of a similar kind the earth

does not corrode even after a long time, those he should cause to be buried where one boundary joins (the other).

252. By these signs, by long continued possession, and by constantly flowing streams of water the king shall ascertain the boundary (of the land) of two disputing parties.

253. If there be a doubt even on inspection of the marks, the settlement of a dispute regarding boundaries shall depend on witnesses.

254. The witnesses, (giving evidence) regarding a boundary, shall be examined concerning the landmarks in the presence of the crowd of the villagers and also of the two litigants.

255. As they, being questioned, unanimously decide, even so he shall record the boundary (in writing), together with their names.

256. Let them, putting earth on their heads, wearing chaplets (of red flowers) and red dresses, being sworn each by (the rewards for) his meritorious deeds, settle (the boundary) in accordance with the truth.

257. If they determine (the boundary) in the manner stated, they are guiltless (being) veracious witnesses; but if they determine it unjustly, they shall be compelled to pay a fine of two hundred (panas).

258. On failure of witnesses (from the two villages, men of) the four neighbouring villages, who are pure, shall make (as witnesses) a decision concerning the boundary in the presence of the king.

259. On failure of neighbours (who are) original inhabitants (of the country and can be) witnesses with respect to the boundary, (the king) may hear the evidence even of the following inhabitants of the forest,

260. (Viz.) hunters, fowlers, herdsmen, fishermen, root-diggers, snake-catchers, gleaners, and other foresters.

261. As they, being examined, declare the marks for the meeting of the boundaries (to be), even so the king shall justly cause them to be fixed between the two villages.

262. The decision concerning the boundary-marks of fields, wells, tanks, of gardens and houses depends upon (the evidence of) the neighbours.

263. Should the neighbours give false evidence, when men dispute about a boundary-mark, the king shall make each of them pay the middlemost amercement as a fine.

264. He who by intimidation possessess himself of a house, a

tank, a garden, or a field, shall be fined five hundred (paṇas) (if he trespassed) through ignorance, the fine (shall be) two hundred (paṇas).

265. If the boundary cannot be ascertained (by any evidence), let a righteous king with (the intention of) benefiting them (all), himself assign (his) land (to each); that is the settled rule.

266. Thus the law for deciding boundary (disputes) has been fully declared, I will next propound the (manner of) deciding (cases of) defamation.

267. A Kshatriya, having defamed a Brâhmaṇa, shall be fined one hundred (paṇas); a Vaiśya one hundred and fifty or two hundred; a Śûdra shall suffer corporal punishment.

268. A Brâhmaṇa shall be fined fifty (paṇas) for defaming a Kshatriya; in (the case of) a Vaiśya the fine shall be twenty-five (paṇas); in (the case of) a Śûdra twelve.

269. For offenses of twice-born men against those of equal caste (varṇa, the fine shall be) also twelve (paṇas); for speeches which ought not to be uttered, that (and every fine shall be) double.

270. A once-born man (A Śûdra), who insults a twice-born man with gross invective, shall have his tongue cut out; for he is of low origin.

271. If he mentions the names and castes (gâti) of the (twice-born) with contumely, an iron nail, ten fingers long, shall be thrust red-hot into his mouth.

272. If he arrogantly teaches Brâhamaṇas their duty, the king shall cause hot oil to be poured into his mouth and into his ears.

273. He who through arrogance makes false statements regarding the learning (of a caste-fellow), his country, his caste (gâti), or the rites by which his body was sanctified, shall be compelled to pay a fine of two hundred (paṇas).

274. He who even in accordance with the true facts (contemptuously) calls another man one-eyed, lame, or the like (names), shall be fined at least one karshâpaṇa.

275. He who defames his mother, his father, his wife, his brother, his son, or his teacher, and he who gives not the way to his preceptor, shall be compelled to pay one hundred (paṇas).

276. (For mutual abuse) by a Brâhmaṇa and a Kshatriya a fine must be imposed by a discerning (king), on the Brâhmaṇa the lowest amercement, but on the Kshatriya the middlemost.

277. A Vaiśya and a Śûdra must be punished exactly in the same manner according to their respective castes, but the tongue (of the Śûdra) shall not be cut out; that is the decision.

278. Thus the rules for punishment (applicable to cases) of defamation have been truly declared; I will next propound the decision (of cases) of assault.

279. With whatever limb a man of a low caste does hurt to (a man of the three) highest (castes), even that limb shall be cut off; that is the teaching of Manu.

280. He who raises his hand or a stick, shall have his hand cut off; he who in anger kicks with his foot, shall have his foot cut off.

281. A low-caste man who tries to place himself on the same seat with a man of a high caste, shall be branded on his hip and be banished, or (the king) shall cause his buttock to be gashed.

282. If out of arrogance he spits (on a superior), the king shall cause both his lips to be cut off; . . .

283. If he lays hold of the hair (of a superior), let the (king) unhesitatingly cut off his hands, likewise (if he takes him) by the feet, the beard, the neck, or the scrotum.

284. He who breaks the skin (of an equal) or fetches blood (from him) shall be fined one hundred (paṇas), he who cuts a muscle six nishkas, he who breaks a bone shall be banished.

285. According to the usefulness of the several (kinds of) trees a fine must be inflicted for injuring them; that is the settled rule.

286. If a blow is struck against men or animals in order to (give them) pain, (the judge) shall inflict a fine in proportion to the amount of pain (caused).

287. If a limb is injured, a wound (is caused), or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and the expenses of the cure as a fine (to the king).

288. He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the king a fine equal to the (damage).

289. In the case of (damage done to) leather, or to utensils of leather, of wood, or of clay, the fine (shall be) five times their value; likewise in the case of (damage to) flowers, roots, and fruit.

290. They declare with respect to a carriage, its driver and its owner, (that there are) ten cases in which no punishment (for damage done) can be inflicted; in other cases a fine is prescribed.

291. When the nosé-string is snapped, when the yoke is broken,

when the carriage turns sideways or back, when the axle or a wheel is broken,

292. When the leather-thongs, the rope around the neck or the bridle are broken, and when (the driver) has loudly called out, "Make way," Manu has declared (that in all these cases) no punishment (shall be inflicted).

293. But if the cart turns off (the road) through the driver's want of skill, the owner shall be fined, if damage (is done), two hundred (paṇas).

294. If the driver is skilful (but negligent), he alone shall be fined; if the driver is unskilful, the occupants of the carriage (also) shall be each fined one hundred (paṇas).

295. But if he is stopped on his way by cattle or by (another) carriage, and he causes the death of any living being, a fine shall without doubt be imposed.

296. If a man is killed, his guilt will be at once the same as (that of) a thief; for large animals such as cows, elephants, camels or horses, half of that.

297. For injuring small cattle the fine (shall be) two hundred (paṇas); the fine for beautiful wild quadrupeds and birds shall amount to fifty (paṇas).

298. For donkeys, sheep, and goats the fine shall be five mâshas; but the punishment for killing a dog or a pig shall be one mâsha.

299. A wife, a son, a slave, a pupil, and a (younger) brother of the full blood who have committed faults, may be beaten with a rope or a split bamboo.

300. But on the back of the body (only), never on a noble part; he who strikes them otherwise will incur the same guilt as a thief.

301. Thus the whole law of assault (and hurt) has been declared completely; I will now explain the rules for the decision (in cases) of theft.

302. Let the king exert himself to the utmost to punish thieves; for, if he punishes thieves, his fame grows and his kingdom prospers.

303. That king, indeed, is ever worthy of honour who ensures the safety (of his subjects); for the sacrificial session (sattra, which he, as it were, performs thereby) ever grows in length, the safety (of his subjects representing) the sacrificial fee.

304. A king who (duly) protects (his subjects) receives from each and all the sixth part of their spiritual merit; if he does not protect them, the sixth part of their demerit also (will fall on him).

305. Whatever (merit a man gains by) reading the Veda, by sacrificing, by charitable gifts, (or by) worshipping (Gurus and

gods), the king obtains a sixth part of that in consequence of his duty in protecting (his kingdom).

306. A king who protects the created beings in accordance with the sacred law and smites those worthy of corporal punishment, daily offers (as it were) sacrifices at which hundred thousands (are given) as fees.

307. A king who does not afford protection (yet) takes his share in kind, his taxes, tolls and duties, daily presents and fines, will (after death) soon sink into hell.

308. They declare that a king who affords no protection, (yet) receives the sixth part of the produce, takes upon himself all the foulness of his whole people.

309. Know that a king who heeds not the rules (of the law), who is an atheist, and rapacious, who does not protect (his subjects, but) devours them, will sink low (after death).

310. Let him carefully restrain the wicked by three methods, — by imprisonment, by putting them in fetters, and by various (kinds of) corporal punishments.

311. For by punishing the wicked and by favouring the virtuous, kings are constantly sanctified, just as twice-born men by sacrifices.

312. A king who desires his own welfare must always forgive litigants, infants, aged and sick men, who inveigh against him.

313. He who, being abused by men in pain, pardons (them), will in reward of that (act) be exalted in heaven; but he who, (proud) of his kingly state, forgives them not, will for that (reason) sink into hell.

314. A thief shall, running, approach the king, with flying hair, confessing that theft (and saying), "Thus have I done, punish me;"

315. (And he must) carry on his shoulder a pestle, or a club of Khadira wood, or a spear sharp at both ends, or an iron staff.

316. Whether he be punished or pardoned, the thief is freed from the (guilt of) theft; but the king, if he punishes not, takes upon himself the guilt of the thief.

317. The killer of a learned Brâhmaṇa throws his guilt on him who eats his food, an adulterous wife on her (negligent) husband, a (sinning) pupil or sacrificer on (their negligent) teacher (or priest), a thief on the king (who pardons him).

318. But the men who have committed crimes and have been punished by the king, go to heaven, being pure like those who performed meritorious deeds.

319. He who steals the rope or the water-pot from a well, or damages a hut where water is distributed, shall pay one mâsha as a fine and restore the (article abstracted or damaged) in its (proper place).

320. On him who steals more than ten kymbhas of grain corporal punishment (shall be inflicted); in other cases he shall be fined eleven times as much, and shall pay to the (owner the value of his) property.

321. So shall corporal punishment be inflicted for stealing more than a hundred (palas) of articles sold by the weight, (*i.e.*) of gold, silver, and so forth, and of most excellent clothes.

322. For (stealing) more than fifty (palas) it is enacted that the hands (of the offender) shall be cut off; but in other cases, let him inflict a fine of eleven times the value.

323. For stealing men of noble family and especially women and the most precious gems, (the offender) deserves corporal (or capital) punishment.

324. For stealing large animals, weapons or medicines let the king fix a punishment after considering the time and the purpose (for which they were destined).

325. For (stealing) cows belonging to Brâhmaṇas, for piercing (the nostrils of) a barren cow, and for stealing (other) cattle (belonging to Brâhmaṇas, the offender) shall forthwith lose half his feet.

326. (For stealing) thread, cotton, drugs causing fermentation, cowdung, molasses, sour milk, sweet milk, butter-milk, water, or grass,

327. Vessels made of bamboo or other cane, salt of various kinds, earthen (vessels), earth and ashes,

328. Fish, birds, oil, clarified butter, meat, honey, and other things that come from beasts.

329. Or other things of a similar kind, spirituous liquor, boiled rice, and every kind of cooked food, the fine (shall be) twice the value (of the stolen article).

330. For flowers, green corn, shrubs, creepers, trees, and other unhusked (grain) the fine (shall be) five krishṇalas.

331. For husked grain, vegetables, roots, and fruit the fine (shall be) one hundred (paṇas) if there is no connexion (between the owner and the thief), fifty (paṇas) if such a connexion exists.

332. An offence (of this description), which is committed in the presence (of the owner) and with violence, will be robbery; if (it is committed) in his absence, it will be theft; likewise if (the possession of) anything is denied after it has been taken.

333. On that man who may steal (any of) the above-mentioned articles, when they are prepared for (use), let the king inflict the first (or lowest) amercement; likewise on him who may steal (a sacred) fire out of the room (in which it is kept).

334. With whatever limb a thief in any way commits (an offence) against men, even of that (the king) shall deprive him in order to prevent (a repetition of the crime).

335. Neither a father, nor a teacher, nor a friend, nor a mother, nor a wife, nor a son, nor a domestic priest must be left unpunished by a king, if they do not keep within their duty.

336. Where another common man would be fined one kârshapaṇa, the king shall be fined one thousand; that is the settled rule.

337. In (a case of) theft the guilt of a Śûdra shall be eightfold, and of a Vaiśya sixteenfold, that of a Kshatriya two-and-thirty fold.

338. That of a Brâhmaṇa sixty-fourfold, or quite a hundredfold, or (even) twice four-and-sixtyfold; (each of them) knowing the nature of the offence.

339. (The taking of) roots and of fruit from trees, of wood for a (sacrificial) fire, and of grass for feeding cows, Manu has declared (to be) no theft.

340. A Brâhmaṇa, seeking to obtain property from a man who took what was not given to him, either by sacrificing for him or by teaching him, is even like a thief.

341. A twice-born man, who is travelling and whose provisions are exhausted, shall not be fined, if he takes two stalks of sugarcane or two (esculent) roots from the field of another man.

342. He who ties up unbound or sets free tied up (cattle of other men), he who takes a slave, a horse, or a carriage will have incurred the guilt of a thief.

343. A king who punishes thieves according to these rules, will gain fame in this world and after death unsurpassable bliss.

344. A king who desires to gain the throne of Indra and imperishable eternal fame, shall not, even for a moment, neglect (to punish) the man who commits violence.

345. He who commits violence must be considered as the worst offender, (more wicked) than a defamer, than a thief, and than he who injures (another) with a staff.

346. But that king who pardons the perpetrator of violence quickly perishes and incurs hatred.

347. Neither for friendship's sake, nor for the sake of great

lucre, must a king let go perpetrators of violence, who cause terror to all creatures.

348. Twice-born men may take up arms when (they are) hindered (in the fulfilment of) their duties, when destruction (threatens) the twice-born castes (varṇa) in (evil) times.

349. In their own defence, in a strife for the fees of officiating priests, and in order to protect women and Brâhmaṇas; he who (under such circumstances) kills in the cause of right, commits no sin.

350. One may slay without hesitation an assassin who approaches (with murderous intent), whether (he be one's) teacher, a child or an aged man, or a Brâhmaṇa deeply versed in the Vedas.

351. By killing an assassin the slayer incurs no guilt, whether (he does it) publicly or secretly; in that case fury recoils upon fury.

352. Men who commit adultery with the wives of others, the king shall cause to be marked by punishments which cause terror, and afterwards banish.

353. For by (adultery) is caused a mixture of the castes (varṇa) among men; thence (follows) sin, which cuts up even the roots and causes the destruction of everything.

354. A man formerly accused of (such) offences, who secretly converses with another man's wife, shall pay the first (or lowest) amercement.

355. But a man, not before accused, who (thus) speaks with (a woman) for some (reasonable) cause, shall not incur any guilt, since in him there is no transgression.

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371. If a wife, proud of the greatness of her relatives or (her own) excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many.

372. Let him cause the male offender to be burnt on a red-hot bed; they shall put logs under it, (until) the sinner is burned (to death).

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381. No greater crime is known on earth than slaying a Brâhmaṇa; a king, therefore, must not even conceive in his mind the thought of killing a Brâhmaṇa.

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386. That king in whose town lives no thief, no adulterer, no defamer, no man guilty of violence, and no committer of assaults, attains the world of Śakra (Indra).

387. The suppression of those five in his dominions secures to a king paramount sovereignty among his peers and fame in the world.

388. A sacrificer who forsakes an officiating priest, and an officiating priest who forsakes a sacrificer, (each being) able to perform his work and not contaminated (by grievous crimes) must each be fined one hundred (paṇas).

389. Neither a mother, nor a father, nor a wife, nor a son shall be cast off; he who casts them off, unless guilty of a crime causing loss of caste, shall be fined by the king six hundred (panas).

390. If twice-born men dispute among each other concerning the duty of the orders, a king who desires his own welfare should not (hastily) decide (what is) the law.

391. Having shown them due honour, he should with (the assistance of) Brâhmaṇas, first soothe them by gentle (speech) and afterwards teach them their duty.

392. A Brâhmaṇa who does not invite his next neighbour and his neighbour next but one, (though) both (be) worthy (of the honour), to a festival at which twenty Brâhmaṇas are entertained, is liable to a fine of one mâsha.

393. A Śrotriya who does not entertain a virtuous Śrotriya at auspicious festive rites, shall be made to pay him twice (the value of) the meal and a mâsha of gold (as a fine to the king).

394. A blind man, an idiot, (a cripple) who moves with the help of a board, a man full seventy years old, and he who confers benefits on Śrotriyas, shall not be compelled by any (king) to pay a tax.

395. Let the king always treat kindly a Śrotriya, a sick or distressed man, an infant, and an aged or an indigent man, a man of high birth, and an honourable man (Ayra).

396. A washerman shall wash (the clothes of his employers) gently on a smooth board of Śalmaliwood; he shall not return the clothes (of one person) for those (of another), nor allow anybody (but the owner) to wear them.

397. A weaver (who has received) ten palas (of thread), shall return (cloth weighing) one pala more; he who acts differently shall be compelled to pay a fine of twelve (paṇas).

398. Let the king take one-twentieth of that (amount) which men, well acquainted with the settlement of tolls and duties (and)

skilful in (estimating the value of) all kinds of merchandise, may fix as the value for each saleable commodity.

399. Let the king confiscate the whole property of (a trader) who out of greed exports goods of which the king has a monopoly or (the export of which is) forbidden.

400. He who avoids a custom-house (or a toll), he who buys or sells at an improper time, or he who makes a false statement in enumerating (his goods), shall be fined eight times (the amount of duty) which he tried to evade.

401. Let (the king) fix (the rates for) the purchase and sale of all marketable goods, having (duly) considered whence they come, whither they go, how long they have been kept, the (probable) profit and the (probable) outlay.

402. Once in five nights, or at the close of each fortnight, let the king publicly settle the prices for the (merchants).

403. All weights and measures must be duly marked, and once in six months let him re-examine them.

404. At a ferry an (empty) cart shall be made to pay one paṇa, a man's (load) half a paṇa, an animal and a woman one quarter of a (paṇa), an unloaded man one-half of a quarter.

405. Carts (laden) with vessels full (of merchandise) shall be made to pay toll at a ferry according to the value (of the goods), empty vessels and men without luggage some trifle.

406. For a long passage the boat-hire must be proportioned to the places and times; know that this (rule refers) to (passages along) the banks of rivers; at sea there is no settled (freight).

407. But a woman who has been pregnant two months or more, an ascetic, a hermit in the forest, and Brâhmaṇas who are students of the Veda, shall not be made to pay toll at a ferry.

408. Whatever may be damaged in a boat by the fault of the boatmen, that shall be made good by the boatmen collectively, (each paying) his share.

409. This decision in suits (brought) by passengers (holds good only) in case the boatmen are culpably negligent on the water; in the case of (an accident) caused by (the will of) the gods, no fine can be (inflicted on them.)

410. (The king) should order a Vaisya to trade, to lend money, to cultivate the land, or to tend cattle, and a Śûdra to serve the twice-born castes.

411. (Some wealthy) Brâhmana shall compassionately support both a Kshatriya and a Vaisya, if they are distressed for a livelihood, employing them on work (which is suitable for) their (castes).

412. But a Brâhmaṇa who, because he is powerful, out of greed makes initiated (men of the) twice-born (castes) against their will do the work of slaves, shall be fined by the king six hundred (paṇas).

413. But a Śûdra, whether bought or unbought, he may compel to do servile work; for he was created by the Self-existent (Svayambhû) to be the slave of a Brâhmaṇa.

414. A Śûdra, though emancipated by his master, is not released from servitude; since that is innate in him, who can set him free from it?

415. There are slaves of seven kinds, (viz.) he who is made a captive under a standard, he who serves for his daily food, he who is born in the house, he who is bought and he who is given, he who is inherited from ancestors, and he who is enslaved by way of punishment.

416. A wife, a son, and a slave, these three are declared to have no property; the wealth which they earn is (acquired) for him to whom they belong.

417. A Brâhmaṇa may confidently seize the goods of (his) Śûdra (slave); for, as that (slave) can have no property, his master may take possession.

418. (The king) should carefully compel Vaiśyas and Śûdras to perform the work (prescribed) for them; for if these two (castes) swerved from their duties, they would throw this (whole) world into confusion.

419. Let him daily look after the completion of his undertakings, his beasts of burden, and carriages, (the collection of) his revenues and the disbursements, his mines and his treasury.

420. A king who thus brings to a conclusion all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss).

Chapter XX

THE LEX SALICA[1]

TITLE I. CONCERNING SUMMONSES

1. If any one be summoned before the "Thing" by the king's law, and do not come, he shall be sentenced to 600 denars, which make 15 shillings (solidi).

2. But he who summons another, and does not come himself, shall, if a lawful impediment have not delayed him, be sentenced to 15 shillings, to be paid to him whom he summoned.

3. And he who summons another shall walk with witnesses to the home of that man, and, if he be not at home, shall bid the wife or any one of the family to make known to him that he has been summoned to court.

4. But if he be occupied in the king's service he can not summon him.

5. But if he shall be inside the hundred seeing about his own affairs, he can summon him in the manner explained above.

TITLE II. CONCERNING THEFTS OF PIGS, ETC.

1. If any one steal a sucking pig, and it be proved against him, he shall be sentenced to 120 denars, which make three shillings.

2. If any one steal a pig that can live without its mother, and it be proved on him, he shall be sentenced to 40 denars — that is, 1 shilling.

14. If any one steal 25 sheep where there were no more in that flock, and it be proved on him, he shall be sentenced to 2500 denars — that is, 62 shillings.

[1] [Reprinted from Ernest F. Henderson's "Select Historical Documents of the Middle Ages," London, G. Bell & Sons, Ltd., 1912, with the consent of the publishers and The Macmillan Company. Translated from *Geugler*, "Germanische Rechtsdenkmäler," p. 267. The date of these laws has not been definitely ascertained. Their first reduction to writing probably may be placed in the second half of the 400s. This code also has a special interest for us as one of the fountains of English law. It is the oldest written Germanic code which survives, with the possible exception of the fragments of the Visigothic code attributed to Euric.]

TITLE III. CONCERNING THEFTS OF CATTLE

4. If any one steal that bull which rules the herd and never has been yoked, he shall be sentenced to 1800 denars, which make 45 shillings.

5. But if that bull is used for the cows of three villages in common, he who stole him shall be sentenced to three times 45 shillings.

6. If any one steal a bull belonging to the king he shall be sentenced to 3600 denars, which make 90 shillings.

TITLE IV. CONCERNING DAMAGE DONE AMONG CROPS OR IN ANY ENCLOSURE

1. If any one finds cattle, or a horse, or flocks of any kind in his crops, he shall not at all mutilate them.

2. If he do this and confess it, he shall restore the worth of the animal in place of it, and shall himself keep the mutilated one.

3. But if he have not confessed it, and it have been proved on him, he shall be sentenced, besides the value of the animal and the fines for delay, to 600 denars, which make 15 shillings.

TITLE XI. CONCERNING THEFTS OR HOUSEBREAKING OF FREEMEN

1. If any freeman steal, outside of the house, something worth 2 denars, he shall be sentenced to 600 denars, which make 15 shillings.

2. But if he steal, outside of the house, something worth 40 denars, and it be proved on him, he shall be sentenced, besides the amount and the fines for delay, to 1400 denars, which make 35 shillings.

3. If a freeman break into a house and steal something worth 2 denars, and it be proved on him, he shall be sentenced to 15 shillings.

4. But if he shall have stolen something worth more than 5 denars, and it have been proved on him, he shall be sentenced, besides the worth of the object and the fines for delay, to 1400 denars, which make 35 shillings.

5. But if he have broken, or tampered with, the lock, and thus have entered the house and stolen anything from it, he shall be

sentenced, besides the worth of the object and the fines for delay, to 1800 denars, which make 45 shillings.

6. And if he have taken nothing, or have escaped by flight, he shall, for the housebreaking alone, be sentenced to 1200 denars, which make 30 shillings.

TITLE XII. CONCERNING THEFTS OR HOUSEBREAKING ON THE PART OF SLAVES

1. If a slave steal, outside of the house, something worth two denars, he shall, besides paying the worth of the object and the fines for delay, be stretched out and receive 120 blows.

2. But if he steal something worth 40 denars, he shall either be castrated or pay 6 shillings. But the lord of the slave who committed the theft shall restore to the plaintiff the worth of the object and the fines for delay.

TITLE XIII. CONCERNING RAPE COMMITTED BY FREEMEN

1. If three men carry off a freeborn girl, they shall be compelled to pay 30 shillings.

2. If there are more than three, each one shall pay 5 shillings.

3. Those who shall have been present with boats shall be sentenced to three shillings.

4. But those who commit rape shall be compelled to pay 2500 denars, which make 63 shillings.

5. But if they have carried off that girl from behind lock and key, or from the spinning room, they shall be sentenced to the above price and penalty.

6. But if the girl who is carried off be under the king's protection, then the "frith" (peace-money) shall be 2500 denars, which make 63 shillings.

7. But if a bondsman of the king, or a leet, should carry off a free woman, he shall be sentenced to death.

8. But if a free woman have followed a slave of her own will, she shall lose her freedom.

9. If a freeborn man shall have taken an alien bondswoman, he shall suffer similarly.

10. If any body take an alien spouse and join her to himself in matrimony, he shall be sentenced to 2500 denars, which make 63 shillings.

TITLE XIV. CONCERNING ASSAULT AND ROBBERY

1. If any one have assaulted and plundered a freeman, and it be proved on him, he shall be sentenced to 2500 denars, which make 63 shillings.

2. If a Roman have plundered a Salian Frank, the above law shall be observed.

3. But if a Frank have plundered a Roman, he shall be sentenced to 35 shillings.

4. If any man should wish to migrate, and has permission from the king, and shall have shown this in the public "Thing:" whoever, contrary to the decree of the king, shall presume to oppose him, shall be sentenced to 8000 denars, which make 200 shillings.

TITLE XV. CONCERNING ARSON

1. If any one shall set fire to a house in which men were sleeping, as many freemen as were in it can make complaint before the "Thing;" and if any one shall have been burned in it, the incendiary shall be sentenced to 2500 denars, which make 63 shillings.

TITLE XVII. CONCERNING WOUNDS

1. If any one have wished to kill another person, and the blow have missed, he on whom it was proved shall be sentenced to 2500 denars, which make 63 shillings.

2. If any person have wished to strike another with a poisoned arrow, and the arrow have glanced aside, and it shall be proved on him: he shall be sentenced to 2500 denars, which make 63 shillings.

3. If any person strike another on the head so that the brain appears, and the three bones which lie above the brain shall project, he shall be sentenced to 1200 denars, which make 30 shillings.

4. But if it shall have been between the ribs or in the stomach so that the wound appears and reaches to the entrails, he shall be sentenced to 1200 denars — which make 30 shillings — besides five shillings for the physician's pay.

5. If any one shall have struck a man so that blood falls to the floor, and it be proved on him, he shall be sentenced to 600 denars, which make 15 shillings.

6. But if a freeman strike a freeman with his fist so that blood does not flow, he shall be sentenced for each blow — up to 3 blows — to 120 denars, which make 3 shillings.

TITLE XVIII. CONCERNING HIM WHO, BEFORE THE KING, ACCUSES AN INNOCENT MAN

If any one, before the king, accuse an innocent man who is absent, he shall be sentenced to 2500 denars, which make 63 shillings.

TITLE XIX. CONCERNING MAGICIANS

1. If any one have given herbs to another so that he die, he shall be sentenced to 200 shillings (or shall surely be given over to fire).

2. If any person have bewitched another, and he who was thus treated shall escape, the author of the crime, who is proved to have committed it, shall be sentenced to 2500 denars, which make 63 shillings.

TITLE XXIV. CONCERNING THE KILLING OF LITTLE CHILDREN AND WOMEN

1. If any one have slain a boy under 10 years — up to the end of the tenth — and it shall have been proved on him, he shall be sentenced to 24000 denars, which make 600 shillings.

3. If any one have hit a free woman who is pregnant, and she dies, he shall be sentenced to 28000 denars, which make 700 shillings.

6. If any one have killed a free woman after she has begun bearing children, he shall be sentenced to 24000 denars, which make 600 shillings.

7. After she can have no more children, he who kills her shall be sentenced to 8000 denars, which make 200 shillings.

TITLE XXX. CONCERNING INSULTS

3. If any one, man or woman, shall have called a woman harlot, and shall not have been able to prove it, he shall be sentenced to 1800 denars, which make 45 shillings.

4. If any person shall have called another "fox," he shall be sentenced to 3 shillings.

5. If any man shall have called another "hare," he shall be sentenced to 3 shillings.

6. If any man shall have brought it up against another that he have thrown away his shield, and shall not have been able to prove it, he shall be sentenced to 120 denars, which make 3 shillings.

7. If any man shall have called another "spy" or "perjurer," and shall not have been able to prove it, he shall be sentenced to 600 denars, which make 15 shillings.

TITLE XXXIII. CONCERNING THE THEFT OF HUNTING ANIMALS

2. If any one have stolen a tame marked stag (-hound?), trained to hunting, and it shall have been proved through witnesses that his master had him for hunting, or had killed with him two or three beasts, he shall be sentenced to 1800 denars, which make 45 shillings.

TITLE XXXIV. CONCERNING THE STEALING OF FENCES

1. If any man shall have cut 3 staves by which a fence is bound or held together, or have stolen or cut the heads of 3 stakes, he shall be sentenced to 600 denars, which make 15 shillings.

2. If any one shall have drawn a harrow through another's harvest after it has sprouted, or shall have gone through it with a waggon where there was no road, he shall be sentenced to 120 denars, which make 3 shillings.

3. If any one shall have gone, where there is no way or path, through another's harvest which has already become thick, he shall be sentenced to 600 denars, which make 15 shillings.

TITLE XLI. CONCERNING THE MURDER OF FREEMEN

1. If any one shall have killed a free Frank, or a barbarian living under the Salic law, and it have been proved on him, he shall be sentenced to 8000 denars.

2. But if he shall have thrown him into a well or into the water, or shall have covered him with branches or anything else, to conceal him, he shall be sentenced to 24000 denars, which make 600 shillings.

3. But if any one has slain a man who is in the service of the king, he shall be sentenced to 24000 denars, which make 600 shillings.

4. But if he have put him in the water or in a well, and covered him with anything to conceal him, he shall be sentenced to 72000 denars, which make 1800 shillings.

5. If any one have slain a Roman who eats in the king's palace, and it have been proved on him, he shall be sentenced to 12000 denars, which make 300 shillings.

6. But if the Roman shall not have been a landed proprietor

and table companion of the king, he who killed him shall be sentenced to 4000 denars, which make 100 shillings.

7. But if he shall have killed a Roman who was obliged to pay tribute, he shall be sentenced to 63 shillings.

9. If any one have thrown a free man into a well, and he have escaped alive, he (the criminal) shall be sentenced to 4000 denars, which make 100 shillings.

TITLE XLV. CONCERNING MIGRATORS

1. If any one wish to migrate to another village and if one or more who live in that village do not wish to receive him, — if there be only one who objects, he shall not have leave to move there.

2. But if he shall have presumed to settle in that village in spite of his rejection by one or two men, then some one shall give him warning. And if he be unwilling to go away, he who gives him warning shall give him warning, with witnesses, as follows: I warn thee that thou may'st remain here this next night as the Salic law demands, and I warn thee that within 10 nights thou shalt go forth from this village. After another 10 nights he shall again come to him and warn him again within 10 nights to go away. If he still refuse to go, again 10 nights shall be added to the command, that the number of 30 nights may be full. If he will not go away even then, then he shall summon him to the "Thing," and present his witnesses as to the separate commands to leave. If he who has been warned will not then move away, and no valid reason detains him, and all the above warnings which we have mentioned have been given according to law: then he who gave him warning shall take the matter into his own hands and request the "comes" to go to that place and expel him. And because he would not listen to the law, that man shall relinquish all that he has earned there, and, besides, shall be sentenced to 1200 denars, which make 30 shillings.

3. But if anyone have moved there, and within 12 months no one have given him warning, he shall remain as secure as the other neighbours.

TITLE XLVI. CONCERNING TRANSFERS OF PROPERTY

1. The observance shall be that the Thunginus or Centenarius shall call together a "Thing," and shall have his shield in the "Thing," and shall demand three men as witnesses for each of

the three transactions. He (the owner of the land to be transferred) shall seek a man who has no connection with himself, and shall throw a stalk into his lap. And to him into whose lap he has thrown the stalk he shall tell, concerning his property, how much of it — or whether the whole or a half — he wishes to give. He in whose lap he threw the stalk shall remain in his (the owner's) house, and shall collect three or more guests, and shall have the property — as much as is given him — in his power. And, afterwards, he to whom that property is entrusted shall discuss all these things with the witnesses collected afterwards, either before the king or in the regular "Thing," he shall give the property up to him for whom it was intended. He shall take the stalk in the "Thing," and, before 12 months are over, shall throw it into the lap of him whom the owner has named heir; and he shall restore not more nor less, but exactly as much as was entrusted to him.

2. And if any one shall wish to say anything against this, three sworn witnesses shall say that they were in the "Thing" which the "Thunginus" or "Centenarius" called together, and that they saw that man who wished to give his property throw a stalk into the lap of him whom he had selected. They shall name by name him who threw his property into the lap of the other, and, likewise, shall name him whom he named his heir. And three other sworn witnesses shall say that he in whose lap the stalk was thrown had remained in the house of him who gave his property, and had there collected three or more guests, and that they had eaten porridge at table, and that he had collected those who were bearing witness, and that those guests had thanked him for their entertainment. All this those other sworn witnesses shall say, and that he who received that property in his lap in the "Thing" held before the king, or in the regular public "Thing," did publicly, before the people, either in the presence of the king or in public "Thing" — namely on the Mallberg, before the "Thunginus" — throw the stalk into the lap of him whom the owner had named as heir. And thus 9 witnesses shall confirm all this.

TITLE L. CONCERNING PROMISES TO PAY

1. If any freeman or leet have made to another a promise to pay, then he to whom the promise was made shall, within 40 days or within such term as was agreed when he made the promise, go to the house of that man with witnesses, or with appraisers. And if he (the debtor) be unwilling to make the promised payment,

he shall be sentenced to 15 shillings above the debt which he had promised.

2. If he then be unwilling to pay, he (the creditor) shall summon him before the "Thing" and thus accuse him: "I ask thee, 'Thunginus,' to bann my opponent who made me a promise to pay and owes me a debt." And he shall state how much he owes and promised to pay. Then the "Thunginus" shall say: "I bann thy opponent to what the Salic law decrees." Then he to whom the promise was made shall warn him (the debtor) to make no payment or pledge of payment to any body else until he have fulfilled his promise to him (the creditor). And straightway on that same day, before the sun sets, he shall go to the house of that man with witnesses, and shall ask if he will pay that debt. If he will not, he (the creditor) shall wait until after sunset; then, if he have waited until after sunset, 120 denars, which make 3 shillings shall be added on to the debt. And this shall be done up to 3 times in 3 weeks. And if at the third time he will not pay all this, it (the sum) shall increase to 360 denars, or 9 shillings: so, namely, that, after each admonition or waiting until after sunset, 3 shillings shall be added to the debt.

3. If any one be unwilling to fulfil his promise in the regular assembly,—then he to whom the promise was made shall go to the count of that place, in whose district he lives, and shall take the stalk and shall say: oh count, that man made me a promise to pay, and I have lawfully summoned him before the court according to the Salic law on this matter; I pledge thee myself and my fortune that thou may'st safely seize his property. And he shall state the case to him, and shall tell how much he (the debtor) had agreed to pay. Then the count shall collect 7 suitable bailiffs, and shall go with them to the house of him who made the promise and shall say: "thou who art here present pay voluntarily to that man what thou didst promise, and choose any two of those bailiffs who shall appraise that from which thou shalt pay; and make good what thou dost owe, according to a just appraisal." But if he will not hear, or be absent, then the bailiffs shall take from his property the value of the debt which he owes. And, according to the law, the accuser shall take two thirds of that which the debtor owes, and the count shall collect for himself the other third as peace money; unless the peace money shall have been paid to him before in this same matter.

4. If the count have been appealed to, and no sufficient reason, and no duty of the king, have detained him — and if he have put

off going, and have sent no substitute to demand law and justice: he shall answer for it with his life, or shall redeem himself with his "wergeld."

TITLE LIV. CONCERNING THE SLAYING OF A COUNT

1. If any one slay a count, he shall be sentenced to 2400 denars, which make 600 shillings.

TITLE LV. CONCERNING THE PLUNDERING OF CORPSES

2. If any one shall have dug up and plundered a corpse already buried, and it shall have been proved on him, he shall be outlawed until the day when he comes to an agreement with the relatives of the dead man, and they ask for him that he be allowed to come among men. And whoever, before he come to an arrangement with the relative, shall give him bread or shelter — even if they are his relations or his own wife — shall be sentenced to 600 denars which make 15 shillings.

3. But he who is proved to have committed the crime shall be sentenced to 8000 denars, which make 200 shillings.

TITLE LVI. CONCERNING HIM WHO SHALL HAVE SCORNED TO COME TO COURT

1. If any man shall have scorned to come to court, and shall have put off fulfilling the injunction of the bailiffs, and shall not have been willing to consent to undergo the fine, or the kettle ordeal, or anything prescribed by law: then he (the plaintiff) shall summon him to the presence of the king. And there shall be 12 witnesses who — 3 at a time being sworn — shall testify that they were present when the bailiff enjoined him (the accused) either to go to the kettle ordeal, or to agree concerning the fine; and that he had scorned the injunction. Then 3 others shall swear that they were there on the day when the bailiffs enjoined that he should free himself by the kettle ordeal or by composition; and that 40 days after that, in the "mallberg," he (the accuser) had again waited until after sunset, and that he (the accused) would not obey the law. Then he (the accuser) shall summon him before the king for a fortnight thence; and three witnesses shall swear that they were there when he summoned him and when he waited for sunset. If he does not then come, those 9, being

sworn, shall give testimony as we have above explained. On that day likewise, if he do not come, he (the accuser) shall let the sun go down on him, and shall have 3 witnesses who shall be there when he waits till sunset. But if the accuser shall have fulfilled all this, and the accused shall not have been willing to come to any court, then the king, before whom he has been summoned, shall withdraw his protection from him. Then he shall be guilty, and all his goods shall belong to the fisc, or to him to whom the fisc may wish to give them. And whoever shall have fed or housed him — even if it were his own wife — shall be sentenced to 600 denars, which make 15 shillings; until he (the debtor) shall have made good all that has been laid to his charge.

TITLE LVII. CONCERNING THE "CHRENECRUDA"

1. If any one have killed a man, and, having given up all his property, has not enough to comply with the full terms of the law, he shall present 12 sworn witnesses to the effect that, neither above the earth nor under it, has he any more property than he has already given. And he shall afterwards go into his house, and shall collect in his hand dust from the four corners of it, and shall afterwards stand upon the threshold, looking inwards into the house. And then, with his left hand, he shall throw over his shoulder some of that dust on the nearest relative that he has. But if his father and (his father's) brothers have already paid, he shall then throw that dust on their (the brothers') children — that is, over three (relatives) who are nearest on the father's and three on the mother's side. And after that, in his shirt, without girdle and without shoes, a staff in his hand, he shall spring over the hedge. And then those three shall pay half of what is lacking of the compounding money or the legal fine; that is, those others who are descended in the paternal line shall do this.

2. But if there be one of those relatives who has not enough to pay his whole indebtedness, he, the poorer one, shall in turn throw the "chrenecruda" on him of them who has the most, so that he shall pay the whole fine.

3. But if he also have not enough to pay the whole, then he who has charge of the murderer shall bring him before the "Thing," and afterwards to 4 Things, in order that they (his friends) may take him under their protection. And if no one have taken him under his protection — that is, so as to redeem him for what he can not pay — then he shall have to atone with his life.

TITLE LIX. CONCERNING PRIVATE PROPERTY

1. If any man die and leave no sons, if the father and mother survive, they shall inherit.

2. If the father and mother do not survive, and he leave brothers or sisters, they shall inherit.

3. But if there are none, the sisters of the father shall inherit.

4. But if there are no sisters of the father, the sisters of the mother shall claim that inheritance.

5. If there are none of these, the nearest relatives on the father's side shall succeed to that inheritance.

6. But of Salic land no portion of the inheritance shall come to a woman: but the whole inheritance of the land shall come to the male sex.

TITLE LXII. CONCERNING WERGELD

1. If any one's father have been killed, the sons shall have half the compounding money (wergeld); and the other half the nearest relatives, as well on the mother's as on the father's side, shall divide among themselves.

2. But if there are no relatives, paternal or maternal, that portion shall go to the fisc.

Chapter XXI

KING ÆTHELBIRHT'S DOOMS[1]

These are the Dooms which King Æthelbirht established in the Days of Augustine.

1. The property of God and of the church, twelve-fold[2]; a bishop's property, eleven-fold; a priest's property, nine-fold; a deacon's property, six-fold; a clerk's property, three-fold; 'church-frith,'[3] two-fold; 'm : . . . . frith,' two-fold.

2. If the king calls his 'leod'[4] to him, and any one there do

[1] [From Benjamin Thorpe's "Ancient Laws and Institutes of England" (vol. i, Secular Laws); (comprising Laws enacted under the Anglo-Saxon Kings from Æthelbirht to Cnut, with an English Translation of the Saxon; the Laws called Edward the Confessor's; the Laws of William the Conqueror, and those ascribed to Henry the First; also, Monumenta Ecclesiastica Anglicana, from the seventh to the tenth century; and the ancient Latin version of the Anglo-Saxon laws, with a compendious glossary, &c.), printed by command of King William IV under the direction of the Commissioners on the Public Records of the Kingdom (1840).]

Æthelbirht, king of Kent, fourth in succession after Hengist, was baptized by Augustine in the year 597, and died, according to Beda, after a reign of 56 years, on the 24th of February 616. "Hist. Eccles." ii. 5. The laws of Æthelbirht, as well as those of the other Kentish kings, are taken from the "Textus Roffensis," the only ancient MS. in which they are found. In this copy, which is of the twelfth century, each series is written continuously; the several laws being distinguished, though not always accurately, by a large initial letter. The numbers prefixed to the different laws are from the edition published by *Hickes* in his "Thesaurus," and were probably added by J. a Laet; for the convenience of reference which they afford, they are here retained.

[2] There is no verb in this law to fix the sense; but we learn from Beda that it is to be understood of the property of the church when stolen. . . "Hist. Eccl." ii. 5.

[3] The Church-frith is what in the later documents is called the Church-grith, or right of sanctuary and protection given to those within its precincts. By the present law, any infraction of this privilege subjected the offender to a two-fold penalty, or twice the amount of the fine payable for an invasion of the ordinary frith, or what in modern times has been termed a breach of the peace.

[4] I have been unable to discover whether this meant a particular class of persons, such as the Leudes of France: or whether it is used in the ordinary sense of 'people.' . . .

them evil, [let him compensate with] a two-fold 'bōt,'[1] and L. shillings[2] to the king.

3. If the king drink at any one's home,[3] and any one there do any 'lyswe,'[4] let him make two-fold 'bōt.'

4. If a freeman steal from the king, let him pay nine-fold.

5. If a man slay another in the king's 'tūn,'[5] let him make 'bōt' with L. shillings.

6. If any one slay a freeman, L. shillings to the king, as 'drihtin-beah.'[6]

7. If the king's 'ambiht-smith,' or 'laad-rinc,' slay a man, let him pay a half 'leod-geld.'[7]

8. The king's 'mund-byrd,'[8] L. shillings.

[1] Wherever the term 'bote' occurs, it is to be understood of the compensation due to the injured party, as damages for the wrong sustained. This, as in cc. 4, 5, 10, 11, 12, may be due to the king in his personal or private capacity, as well as to others. The penalty due to the crown by way of fine was called the wite (see c. 9.). Both forfeitures are thus spoken of by Tacitus: 'Pars mulctæ regi vel civitati, pars ipsi, qui vindicatur, vel propinquis ejus exsolvitur.' "Germ." c. 12.

[2] The value of the Kentish shilling is altogether a matter of inference. According to cc. 69, 70, 71, of these dooms, compared with cc. 53, 54, the shilling contained xx. scætts, and from a passage which will be found in another part [not reprinted], as a portion of the Mercian law, we learn that thirty thousand scætts were equal to one hundred and twenty pounds of silver. . . . Hence, according to Mercian law, 'a king's simple wer-gild is equal to the were of six thanes, that is, thirty thousand scætts, which make one hundred and twenty pounds.' By this it would appear that the pound contained 250 scætts, or 12½ shillings, which would make the scætt nearly equal to the penny, and the shilling something less than an ounce of silver.

[3] By Alfred this term is used on one occasion as a translation of the Latin monasterium. . . . In another passage it is applied in a far more extended sense. . . . But here it seems to be equivalent to the 'curtis' of the Barbaric laws; the 'hof,' 'huwe,' of Upper and Lower Saxony. In Old-Frisic, 'ham' meant either the hof, or house and land conjointly, or the house itself. The terms hof, huwe, hiþ, ham, and hide, are clearly synonymous; but it would be difficult to find any expressions now in use which would convey the sense of either.

[4] The same term occurs below (c. 72.), with a slightly-varied orthography. . . The meaning must be left to the reader's conjecture, . . .

[5] In the Northern parts of this island this term is not altogether obsolete in its original sense; at least, it is not many years since 'in Scotland a single house was called a town;' in Ireland it is still called a township. The nature of such a settlement is thus described by Tacitus: 'Vicos locant non in nostrum morem, connexis et cohærentibus ædificiis: suam quisque domum spatio circumdat.' "Germ." c. 16. The economy of a royal vill, in even its minutest particulars, will be found in the Capitulare de Villis of Charlemagne.

[6] Literally as a lord-ring. In the later dooms this fine is called the man-bote (See Edw. Conf. 12.), whether paid to the king or a subject.

[7] The 'leod-geld,' or, as it is called, c. 31, the 'wer-geld,' was the sum paid to the family of a man who had been slain, as a compensation for the death of their kinsman. In the Latin documents these terms are usually translated, 'compositio, solutio, hominis occisi.'

[8] Protection: but the fine here imposed is for an infraction of the round-byrd, or what in the later dooms is called 'mund-bryce.' Under this head are to be classed the penalties spoken of in cc. 2, 6.

9. If a freeman steal from a freeman, let him make threefold 'bōt'; and let the king have the 'wite' and all the chattels.

10. If a man lie with the king's maiden,[1] let him pay a 'bōt' of L. shillings.

11. If she be a grinding slave, let him pay a 'bōt' of XXV. shillings.

12. Let the king's 'fed-esl' [nurse?] be paid for with XX. shillings.

13. If a man slay another in an 'eorl's' 'tūn,' let him make 'bōt' with XII. shillings.

14. If a man lie with an 'eorl's' 'birele,'[2] let him make 'bōt' with XII. shillings.

15. A 'ceorl's' 'mund-byrd,' VI. shillings.

16. If a man lie with a 'ceorl's' 'birele,' let him make 'bōt' with VI. shillings; with a slave of the second [class], L. 'scætts'[3]; with one of the third, XXX. 'scætts.'

17. If any one be the first[4] to make an inroad into a man's 'tūn,' let him make 'bōt' with VI. shillings; let him who follows, with III. shillings; after, each, a shilling.

18. If a man furnish weapons to another where there is strife, though no evil be done, let him make 'bōt' with VI. shillings.

19. If 'weg-reaf'[5] be done, let him make 'bōt' with VI. shillings.

[1] It is clear from the context that the person here spoken of was of the servile classes. The Salic Law notices a 'regis ancilla' (Tit. 27.), and the Ripuarian law an 'ancilla regia' (Tit. 58. § 9. 14.), but without giving us any further knowledge of their duties. From cc. 14. 16. it might be inferred that the mægden-man was a cupbearer, if such an office in the royal household could be supposed to have been conferred on a female. In Beowulf the mead is distributed by females, but then they are royal personages.

[2] A female cup-bearer.

[3] It has been already stated, on the authority of a passage in the Mercian law, that there were 250 scætts in a pound of silver. An examination of those which remain gives an average of from 15 to 18 or 19 grains of silver, though some have been found to contain 20 grains. *Ruding's* "Annals of the Coinage," vol. i. p. 296.

[4] The power of 'ge' in composition can only be gathered from the context in these early specimens of the Anglo-Saxon language; and though the translation adopts the import of the simple verb, it is evident that a forcible entry of some kind is here intended.

[5] This appears to have been a similar offence with the Longobardic 'weg-worte' (*Ed. Rotharis*, c. 26), and perhaps the later '*fore-steal*,' when this was attended with robbery. It might be termed a highway robbery, were it not that this offence has acquired a technical sense which can hardly have been required to make out a case of weg-reaf. With this law it is conceived the succeeding one ought to be connected, and that their object is to declare, that for simple weg-reaf the fine should be 6s., but for weg-reaf attended by homicide, 20s., in addition to the 'Leod-geld,' &c.

20. If the man be slain, let him make 'bōt' with XX. shillings.

21. If a man slay another,[1] let him make 'bōt' with a half 'leod-geld' of C. shillings.

22. If a man slay another at an open grave, let him pay XX. shillings, and pay the whole 'leod' within XI. days.

23. If the slayer retire from the land, let his kindred pay a half 'leod.'

24. If any one bind a freeman, let him make 'bōt' with XX. shillings.

25. If any one slay a 'ceorl's' 'hlaf-æta,'[2] let him make 'bōt' with VI. shillings.

26. If [any one] slay a 'læt' of the highest class, let him pay LXXX. shillings; if he slay any one of the second, let him pay LX. shillings; of the third, let him pay XL. shillings.

27. If a freeman commit 'edor'-breach,[3] let him make 'bōt' with VI. shillings.

28. If any one take property from a dwelling, let him pay a three-fold 'bōt.'

29. If a freeman pass over an 'edor,' let him make 'bōt' with IV. shillings.

30. If a man slay another, let him pay with his own money, and with any sound property whatever.

31. If a freeman lie with a freeman's wife, let him pay for it with his 'wer-geld,' and provide[4] another wife with his own money, and bring her to the other.

32. If any one thrust through the 'riht ham-seyld,' let him adequately compensate.

33. If there be 'feax-fang,'[5] let there be L. scætts for 'bōt.'

34. If there be an exposure of the bone, let 'bōt' be made with III. shillings.

[1] That is, if one freeman (ingenuus) kill another.

[2] Literally the 'loaf-eater,' and consequently a domestic or menial servant.

[3] It is clear, from the laws of Alfred, c. 36, that edorbryce was the same offence against a ceorl that burhbryce was against a person of higher rank. It cannot therefore mean a mere breaking of his residence.

[4] The practice here referred to, of purchasing the bride, will be illustrated below in the notes to the Kentish custumal respecting marriage forms, usually printed as a part of the laws of Edmund. It is thus alluded to in Theodoric's letter to Hermanfrid, king of Thuringen: 'Quapropter salutantes vos gratia competenti, indicamus nos venientibus legatis vestris impretiabilis quidem rei, sed *more gentium* suscepisse pretia destinata, equos argenteo colore vestitos, quales decuit esse nuptiales,' *Bouquet*, iv. p. 8. Cf. *Tacitus*, "Germ." c. 18.

[5] A taking hold by the hair: 'Si illum per capillos comprehenderit similiter ter quatuor solidos componat.' Lex Frisionum, addit. tit. iii. c. 40.

35. If there be an injury of the bone, let 'bōt' be made with IV. shillings.

36. If the outer 'hion' [membrane?] be broken, let 'bōt' be made with X. shillings.

37. If it be both, let 'bōt' be made with XX. shillings.

38. If a shoulder be lamed, let 'bōt' be made with XXX. shillings.

39. If an ear be struck off, let 'bōt' be made with XII. shillings.

40. If the other ear hear not, let 'bōt' be made with XXV. shillings.

41. If an ear be pierced, let 'bōt' be made with III. shillings.

42. If an ear be mutilated, let 'bōt' be made with VI. shillings.

43. If an eye be [struck] out, let 'bōt' be made with L. shillings.

44. If the mouth or an eye be injured, let 'bōt' be made with XII. shillings.

45. If the nose[1] be pierced, let 'bōt' be made with IX. shillings.

46. If it be one 'ala,' let 'bōt' be made with III. shillings.

47. If both be pierced, let 'bōt' be made with VI. shillings.

48. If the nose be otherwise mutilated, for each let 'bōt' be made with VI. shillings.

49. If it be pierced, let 'bōt' be made with VI. shillings.

50. Let him who breaks the chin-bone pay for it with XX. shillings.

51. For each of the four front teeth, VI. shillings; for the tooth which stands next to them IV. shillings; for that which stands next to that, III. shillings; and then afterwards, for each a shilling.

52. If the speech be injured, XII. shillings. If the collar bone be broken, let 'bōt' be made with VI. shillings.

53. Let him who stabs [another] through an arm,[2] make 'bōt' with VI. shillings. If an arm be broken, let him make 'bōt' with VI. shillings.

54. If a thumb be struck off, XX. shillings. If a thumb nail

[1] The Frisian law is equally particular in all the possible injuries which can affect this feature, and will throw some light on the obscurities of the present text. 'Thiu nosi thruch-sketen thi ingong tian enza and achta panninga; thi utgong alsa felo: thera inra mutha iawelikes bote twilif skill', thi gristel fiuwer skill': thera thrira domma gersfal iahwelikes bote sex and thritich skill': If the nose be pierced through, for the entrance, 10 *oz.* and 8*d.*; for the exit as much. The bote of each of the inner mouths (*i.e.* the nostrils) is 12*s.*; the gristle, 4*s.* The bote for cutting off the three dams (*i.e.* the sides and the cartilage) is for each 36*s.*' Asega-Buch, p. iii. § 5. And again: 'Thiu nosi thruch-sketen: thi forma wach fiarda thrimine lad, thi other and thi thredda alsa felo: The nose pierced through — the first wall, 3½ loths; the second and third, as much.' *Ib.* § 16.

[2] 'Si quis alio *brachium* super cubitum *transpunxerit* cum *sex* solidis componat.' Lex Alamann. Tit. lxv. c. 3.

be off, let 'bōt' be made with III. shillings. If the shooting [1] (*i.e.* fore) finger be struck off, let 'bōt' be made with VIII. shillings. If the middle finger be struck off, let 'bōt' be made with IV. shillings. If the gold [2] (*i.e.* ring) finger be struck off, let 'bōt' be made with VI. shillings. If the little finger be struck off, let 'bōt' be made with XI. shillings.

55. For every nail, a shilling.

56. For the smallest disfigurement of the face, III. shillings; and for the greater, VI. shillings.

57. If any one strike another with his fist on the nose, III. shillings.

58. If there be a bruise, a shilling; if he receive a right hand bruise, let him [the striker] pay a shilling.

59. If the bruise be black in a part not covered by the clothes, let 'bōt' be made with XXX. 'scætts.'

60. If it be covered by the clothes, let 'bōt' for each be made with XX. 'scætts.'

61. If the belly be wounded, let 'bōt' be made with XII. shillings; if it be pierced through, let 'bōt' be made with XX. shillings.

62. If any one be 'gegemed,' let 'bōt' be made with XXX. shillings.

63. If any one be 'cear-wund,' let 'bōt' be made with III. shillings.

64. If any one destroy . . .

65. If a thigh be broken, let 'bōt' be made with XII. shillings; if the man become halt, then the friends must arbitrate.

66. If a rib be broken, let 'bōt' be made with III. shillings.

67. If a thigh be pierced through, for each stab VI. shillings; if (the wound be) above an inch, a shilling; for two inches, II.; above three, III. shillings.

68. If a sinew be wounded, let 'bōt' be made with III. shillings.

69. If a foot be cut off, let L. shillings be paid.

70. If a great toe be cut off, let X. shillings be paid.

71. For each of the other toes, let one half be paid, like as it is stated for the fingers.

72. If the nail of a great toe be cut off, XXX. 'scætts' for 'bōt'; for each of the others, make 'bōt' with X. 'scætts.'

[1] 'Si secundum digitum quo sagittatur, excusserit, M.CCCC. den. qui faciunt sol. XXXV. culpabilis judicetur.' Lex. Sal. tit. xxxii. 4.

[2] In a law of the Conqueror it is stated: 'Del' lung dei (rendra) XVI. sol.; del' autre ki porte lanel XVII. sol.' (*Holkham* MS. 142. b.) In the Lex Alamannorum, Tit. lxv. c. 21, this finger is called 'digitus annularis.'

73. If a freewoman 'loc-bore' commit any 'leswe,' let her make a 'bōt' of XXX. shillings.

74. Let 'maiden-bōt' be as that of a freeman.

75. For the 'mund' [1] of a widow of the best class, of an 'eorl's' degree, let the 'bōt' be L. shillings; of the second, XX. shillings; of the third, XII. shillings; of the fourth, VI. shillings.

76. If a man carry off a widow not in his own tutelage, let the 'mund' be twofold.

77. If a man buy a maiden with cattle, let the bargain stand, if it be without guile; but if there be guile, let him bring her home again, and let his property be restored to him.

78. If she bear a live child, let her have half the property, if the husband die first.

79. If she wish to go away with her children, let her have half the property.

80. If the husband wish to have them, [let her portion be] as one child.

81. If she bear no child, let her paternal kindred have the 'fioh' and the 'morgen-gyfe.'

82. If a man carry off a maiden by force, let him pay L. shillings to the owner, and afterwards buy [the object of] his will of the owner.

83. If she be betrothed to another man in money, let him make 'bōt' with XX. shillings.

84. If she become 'gængang,' XXXV. shillings; and XV. shillings to the king.

85. If a man lie with an 'esne's' wife, her husband still living, let him make twofold 'bōt.'

86. If one 'esne' slay another unoffending, let him pay for him at his full worth.

87. If an 'esne's' eye and foot be struck out or off, let him be paid for at his full worth.

88. If any one bind another's 'esne,' let him make 'bōt' with VI. shillings.

89. Let the 'weg-reaf' of a 'theow' be III. shillings.

90. If a 'theow' steal, let him make twofold 'bōt.'

[1] The Longobardic Law is the most copious of all the Barbaric codes in its provisions respecting marriage; and is particularly so on the subject of the mund. From that law it appears that the 'mundium' was a sum paid to the family of the bride, for transferring the tutelage they possessed over her to the family of the husband. . . .

Chapter XXII

LAWS OF HOWEL DDA[1]

The Venedotian Code

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[1] [Reprinted from] "Ancient Laws and Institutes of Wales;" (comprising laws supposed to be enacted by Howel the Good, modified by subsequent regulations under the native princes prior to the conquest by Edward the First and Anomalous Laws, consisting principally of institutions which by the Statute of Ruddlan were admitted to continue in force: with an English translation of the Welsh text [by Aneurin Owen] to which are added a few Latin transcripts, containing digests of the Welsh laws, principally of the Dimetian Code, with indexes and glossary), published under the direction of The Commissioners on the Public Records of the Kingdom, 1841. [The following account of the Laws of Howel is taken from the preface of the above compilation:]

About the commencement of the tenth century we find Howel dda, or Howel the good, a conspicuous king in South Wales, in the government of which he succeeded his father Cadell. He inherited from his mother Elen possessions in Powys, and his influence appears to have been powerful throughout North Wales. To him are we indebted for the collections of laws which pass under the name of the Laws of Howel dda, . . .

The measures he adopted for the amendment of the laws of Wales are briefly set out in the prefaces or prologues which commence the several versions of them printed in the following pages [omitted here]. Perceiving the laws and customs of the country to be violated with impunity, and to be falling into lesuetude, he caused them to be examined, that so what was wholesome and beneficial might be retained, what was ambiguous might be expounded, and what was superfluous or prejudicial might be abrogated.

Having summoned the archbishop of Menevia, other bishops and the chief of the clergy, the nobles of Wales, and six persons (four laymen and two clerks) from each comot, to meet at a place called Y Ty Gwyn ar Dav, or the White House on the river Tav, he repaired thither in person; and having spent all the Lent in prayer and fasting, he selected from the whole assembly twelve of the most experienced persons, and added to their number a clerk or doctor of laws, named Blegywryd. To

xiii. Of the page of the chamber. xiv. Of the bard of the household. xv. Of the silentiary. xvi. Of the chief huntsman. xvii. Of the mead brewer. xviii. Of the mediciner of the household. xix. Of the butler. xx. Of the door-ward. xxi. Of the cook. xxii. Of the candle-bearer. xxiii. Of the queen's steward. xxiv. Of the priest of the queen. xxv. Of the chief groom of the queen. xxvi. Of the page of the chamber to the queen. xxvii. Of the handmaid. xxviii. Of the door-ward to the queen. xxix. Of the cook to the queen. xxx. Of the candle-bearer to the queen. xxxi. Of the officers in the court by custom and usage. xxxii. Of the groom of the rein. xxxiii. Of the foot-holder. xxxiv. Of the land-maer (bailiff). xxv. Of the apparitor. xxxvi. Of the porter. xxxvii. Of the watchman. xxxviii. Of the woodman. xxxix. Of the baking-woman. xl. Of the smith of the court. xli. Of the chief of song. xlii. Of the laundress. xliii. Of other things.

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these thirteen was confided the task of examining, retaining, expounding, and abrogating.

The compilation of laws, which resulted from their labours, was, when completed, read through, allowed, and proclaimed; and Howel caused three copies of them to be written, one of which was to accompany the court for daily use, another was deposited in the court at Aberfraw, and a third at Dinevwr.

That nothing might be wanting to strengthen the observance of these laws, sentence of excommunication was denounced against all transgressors, and soon after Howel went to Rome, attended by the archbishop of St. David's, the bishops of Bangor and St. Asaph, and thirteen other personages. The laws were recited before the Pope, and confirmed by his authority; upon which Howel and his companions returned home.

[The glossary terms appearing as a part of the above compilation have been inserted at the appropriate places.]

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BOOK I

THE LAWS OF THE COURT

Chap. xi. Judge of the court.

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2. He is to have his land free; and his horse in attendance; and his linen clothing from the queen, and his woollen clothing from the king.

3. His place is opposite to the king, on the other side of the fire, next to the priest of the household.

4. His lodging is the chamber in which the king sleeps: he is to have a pillow and bed linen from the queen; and the cushion whereon the king sits, during the day, shall be under his head at night: others say that he is not to lodge out of the hall.

5. His horse is to be between the king's horse and the wall, and is to have two shares of provender.

6. He is to have a "throw-board" of the bone of a sea-animal from the king, and a gold ring from the queen, and another from the bard of the household; and these trinkets he is neither to sell nor give away whilst he lives.

7. He is to have one man's share with the servants.

8. He is to have from the chief groom his horse, complete from the first nail to the last, and saddled, and brought to him when he rides.

9. The porter is to open the great gate for him when coming to the palace, both in going in and out: and he is never to let him through the wicket, either in going or coming.

10. He is to have one man's share of the groom's silver.

11. He is to have from the spoil made by the household of the king in a border-country, after the king has had his third, the ox he may choose.

12. He is to have for all causes of landed property twenty-four pence, between him and the other judges, of which two shares belong to him.

13. He is to administer justice to the court, the household, and to whoever pertains to them, without fee.

14. He is to have a trained sparrow-hawk, or a male hawk, from the chief falconer.

15. He is the third indispensable man to the king.

16. He is to have twenty-four pence from every judge whom he may examine: and where he may administer justice in conjunction with other judges, he is to have the share of two men.

17. His protection is unto the queen. Whoever may apply to him for protection shall obtain it, from the time he shall commence the summary of the first cause, until he shall finish the last for that day.

18. If a man enter into mutual pledges with the judge of the court, or with another judge; if that person can prove that the judge has pronounced a wrong sentence, let the judge lose his tongue, or otherwise let him redeem it of the king for its legal

worth: but if the judge shall be in the right, let the party pay him his saraad (fine for insult).

19. His saraad is six kine, and six score of silver, to be augmented.

20. His worth is six score and six kine, to be augmented.

BOOK II

THE LAWS OF THE COUNTRY

Chap. i. The laws of the women.

1. The first of them is: if a woman be given in marriage, she is to abide by her "agweddi" (marriage portion) unto the end of the seventh year; and if there be three nights wanting of the seventh current year, and they separate, let them share into two portions everything belonging to them.

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54. If a man willeth to separate from his wife, and after he shall have separated, willeth another wife; the first, that has been divorced, is free: for no man is to have two wives.

55. Every woman is to go the way she willeth, freely, for she is not to be revenant; and nothing is due from her, except her amobyr (marriage fee), and only one amobyr; for a woman owes no ebediw (a relief payable to the superior lord), only her amobyr; therefore, as a man is to pay only one ebediw, in like manner, a woman is to pay only one amobyr; for there is no ebediw from her, only her amobyr.

56. A woman cannot be admitted as surety, or witness concerning a man.

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58. If a Welsh female be given to an alltud (person from foreign parts), her saraad shall be according to the privilege of her husband, until the alltud shall die; and, after the death of the alltud, until she take another husband; since she is not to revert to the privilege of her kindred.

59. If a Welsh female be given to an alltud, and they have male children, the children are entitled to inheritance by maternity; but they are not to have a share of the privileged farm, until the third generation; excepting the son of an alltud chieftain; and he is to have a share of the whole without delay: the sons of such women are to pay cattle without surety; and the

reason that such cattle are called cattle without surety is, because there is no kindred of the father to pay them, but the mother's kindred alone.

60. A woman ought neither to buy nor sell without consent of the husband unless she be a proprietrix: if she be a proprietrix, however, she may buy and sell.

61. Three women whose sons are to have the privilege of maternity according to law: the son of a Welsh female given to an alltud; the son of a woman given as an hostage to a foreign country, if she become pregnant, being given as an hostage by her kindred and her lord; and of a woman upon whom an alltud shall have committed a rape.

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64. A daughter is to have, of her father's property, only half the share a brother shall have; and she is to pay for galanas (fine imposed upon a criminal and his relatives) only the half of what a brother shall pay; and that for her children: and if she have no children, and she swear that there never will be any, she is to pay nothing; and if there be children arrived at legal age, let them pay on their own account thenceforward.

65. No woman in the world, old or young, is to pay the spear penny.

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70. If a woman be given to a man, and her property specified, and the whole of the property had, except one penny, and that be not had, we say that the man may separate from her on that account, and she cannot reclaim any of her property: and that is the single penny that takes away a hundred.

71. Surety is not requisite for the dilysrwydd (warranty given by a seller) of property which a woman brings as her portion.

72. A woman is entitled to the third of the saraad of her husband, whether from his homicide, or from any other cause.

73. A "raith" (compurgation jury) of women is not to go with a woman, either for theft or for murder or for surety, but a raith of men.

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76. If a woman be slandered on account of a man; the first time, the oaths of seven women exculpate her; the second time, the oaths of fourteen women; the third time, the oaths of fifty women; and thence onward, for every slander, the oaths of fifty women.

77. If a woman kill a man, she is to have the spear penny: and this is the person who receives, but does not pay.

78. Every lady is entitled to the amobyr of the women of her domain.

79. Every land maer is to have the amobyr of the women of the maer-trev.

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81. For every offense that a woman may commit, let her kindred pay for her, as for a man, unless she be married; but if she be married, let her and her husband pay her camlwrw (a fine of three kine or nine score pence) and her dirwy (fine of 12 kine, or three pounds).

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Chap. iv. Of the nine Tavodiogs.

First, are the Nine Tavodiogs (advocates): These are,

1. A lord between his two servants:
2. A priest between his two monks:
3. A father between his two sons:

If one of those we have mentioned above does not will to submit to the decision of the three tavodiogs, and the other wills it; the law requires submission to their decision.

4. The fourth is a judge, respecting his judgment:

If one of two parties between whom a lawsuit has taken place deny the judgment, and the other acknowledge it; the statement of the judge is, in that case, final respecting his judgment.

5. The fifth is a surety, respecting his suretyship:

If he acknowledged, and the one party should say, that the surteyship is for great matter, and the other, that it is for a small matter; since the surety has been acknowledged, he is to be believed as to what it has been given for; and what he says cannot be denied.

6. The sixth is a giver, respecting his gift; which is thus:

If a man should give a thing, and one of two men should say: "It was given to me"; and the other say: "No, to me it was given"; his word is decisive, in what manner he gave it, and in what manner he did not give it.

7. The seventh is a maid, respecting her maidenhood.

8. The eighth is the herdsman of a hamlet:

If a beast belonging to any person be killed by the animals of

other owners, and it be inquired into; the testimony of the herdsman is decisive, as to which ox killed the other.

9. The ninth is a thief, at the gallows, respecting his fellow thieves:

If he should assert that another person was an accessory with him in the robbery for which he is about to suffer; and he should persist in his assertion unto the state God went to, and he is going to; his word is there decisive, and cannot be gainsayed: nevertheless his fellow thief shall not be executed, but is a saleable thief; for no person is to be executed on the word of another, if nothing be found on his person.

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Chap. vi. Of the claim of surety and debtor, this treats.

1. If a person give surety to another, for anything, it is right for him to release the surety, by one of the three means which release a surety; either by paying for him; or by giving pledge; or by denying surety.

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20. If a person give surety to another for a debt, and after giving the surety flee to sanctuary, to avoid paying the debt; we say, that he is not to have sanctuary against that; and that the surety is to give a pledge to the creditor, or otherwise deny the suretyship.

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25. If the person take surety for property from another, and after that the debtor be banished, either on account of murder, or for theft, or for any other illegal acts, so that he ought not to be in the country, and the creditor demand the property from the surety; then the law sees that it is right for them to divide the loss equally between them; that is, the surety to pay one half to the creditor; for it is hard for the surety to pay the whole, and he innocent; and hard for the creditor to lose the whole, by relying upon the surety.

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27. If there be surety for a debt, and before the time of payment the surety die, and leave a son, the son ought to be responsible for the father's debts. Some say, if that son willeth to deny

his suretyship; over the grave of his father the legal denial is to be given: we say it ought not to be; for the learned say, that the law of this world can affect a person, whether he be gone to heaven or to hell, only until he goes to this earth. The cause is, that, though there may be law between man and man upon this earth, there is no law between devil and devil, and there is no law between angel and angel, only the will of God; and therefore, a person that leaves this earth cannot be affected by law; but the others who remain are to act together: and therefore, it is right for the son of that surety who is dead to stand legally for the father, as the father must have stood, if living: and, if he have no son, the lord is to act as a son to him; and, if it be necessary to compel him, he is to be compelled as the surety ought to be, if living.

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32. A female surety is no surety; that is to say, a woman is not to be a surety, because women cannot deny a surety; nor is she to have a raith of men to deny it. The law, however, says that surety given by a woman is a surety; because whoever can inquire into the right to property, the law enacts it to be legal for that person to warrant it; and since a woman can inquire into the right to property, we say that it is indispensable to take surety for dilyswydd (warranty) from her also; and that the surety she may give is a surety: for since a man can deny her, she is also to have men with her to deny a surety.

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39. Many persons are not to become surety, or to give a surety; and the cause for that is, since they are not to deny a surety they are not to give a surety; such are, a monk, an eremite, a foreigner, a scholar of a school, and every person who cannot come without the permission of another to attend the courts.

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Chap. viii. Of contract.

1. Whoever shall make a legal contract, let the two contractors come together, and declare their contract in the manner they will it to be performed; and let them empower the contractmen to enforce the contract in the form they shall have mentioned.

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5. If a person make a contract with another, without contractmen being present, only by mutually pledging of hands, and one of them be minded to deny it; his own oath only is required to deny it.

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8. No person is to make a contract for another, because a contract only continues during the life of the person who makes it.

9. The father cannot make a contract for the son, but by the permission of the son; neither can the son make a contract to affect the father, and the father yet living.

10. A contract breaks a custom.

11. Although a contract be made contrary to the law, it must be kept.

Chap. xi. Laws concerning landed property, and the form of pleading in respect thereto.

1. Twice the law shall be open for landed property, and twice it shall be closed.

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9. If a plaintiff willeth to claim land (at those times) let him appear before the lord, to request a day for hearing his claim; and that upon the land: on that day, let him state his claim; but he is not to have an answer on that day, because it is a sudden claim upon the guardians, and therefore the guardians are to have time for aid: it is right for the plaintiff to oppose their obtaining it, if he can do so; unless the law say that they are to have it. Then it is right for the judge to hear them, and to ask them where are their aids; if they say that their aids are in their own cymwd (territorial division of land) three days are allowed them; if in the adjoining cymwd, nine days; if in the third cymwd, or if flood and ebb be between them and their aid, if before mid-day the time be fixed, a fortnight from that day is the time; if after mid-day the time be fixed, a fortnight from the morrow following: the cause of that is, because it is not an entire day, and that it is not right to compute part of a day for a whole day.

10. And at the time appointed it is right for every person to come upon that land, they and their aid; and then it is right to form two parties, and sit legally. The legal form of sitting is as follows: first, the king, or his representative, with his back to the sun or to the weather, lest the weather incommode his face; and

the judge of the court, or the judge of the cymwd, whoever is the oldest, is to sit before him; and at that person's left hand, the other judge that may be in the field, or the judges; and upon his right hand, the priest or priests, if there be any in the field; and next the lord, or his representative, the two elders, and then his gwrdas (freeholders) in succession on each side of him: then a passage for the judges, opposite them, to pass and repass to their judgment-seat: then the pleader for the plaintiff, with his left hand to the passage; next to him, in the middle, the plaintiff, and his guider on the other hand; and an apparitor standing behind the pleader: and the other party on the other side of the passage; nearest to the passage the pleader for the defendant, with his right hand to the passage; and the defendant next to him, in the middle, and his guider on the other side of him; and an apparitor behind him.

11. After sitting thus, let surety in law be taken: that is, the sureties for landed property are living persons, as pledges, two or more persons for each party; and those pledges shall go into the custody of the lord.

12. Then stillness is to be proclaimed on the field, that is, silence, in the field: whoever shall break that stillness shall pay a camlwrw (fine) of three kine, or nine score of silver: and the word spoken, after that proclamation of silence, shall be unavailable to the person who may speak it, and to the pleader for whose assistance it was said.

13. In this manner sits the king, with his officers around him.

Gwrda. Gwrda. Elder.	KING.	Elder. Gwrda. Gwrda.
Priest. Judge of the Cymwd.		Judge of the Court. Priest
Guider. Defendant. Pleader.		Pleader. Plaintiff. Guider.
Apparitor.		Apparitor.

14. After sitting legally, as we have said above, then it is right for the judge to say to both parties: "Do you now mutually speak of law."

15. And then it is right for the judge to ask the plaintiff: "Who is thy pleader, and who is thy guider?" And then it is right for the plaintiff to name them. And then it is right for the judge to ask the plaintiff: "Wilt thou put to lose and to gain in their hands?" And then it is right for the plaintiff to say: "I will." Then it is right for the judge to ask the pleader and guider, whether they will stand by him in what he is entrusting to them; and then it is right for them to say: "We will."

16. After that it is right for the judge to ask the defendant: "Who is thy pleader, and who is thy guider?" And then it is right for him to name them. Then it is right for the judge to ask him whether he will put to lose and to gain in their hands; and then it is right for him to say: "I will." Then it is right for the judge to say to the plaintiff: "State now thy cause:" and then it is right for the plaintiff to begin pleading.

17. Here is that which it is right for the plaintiff to say: stating that he is the true proprietor of the land here, and of the soil: and, if there be who shall doubt his being the true proprietor of this land and soil, that he has those who can support his title, by kin and descent, sufficient in law; and that he has been unlawfully ejected from his property: and if there be who shall doubt it, that he has enow who know of his having been unlawfully ejected from his property; and that he is therefore appealing to the law, that he is entitled to come lawfully back to the place from which he has been unlawfully ejected.

18. If there be any one who shall say, it is necessary that guardians (persons cognizant of the right claimed) and evidences be produced by the same party; we say that may be done, until the reply of the defendant shall be heard.

19. "God knows," says the defendant, "I am the true proprietor by kin and descent, and therefore I am guarding my estate and my property in the best manner I ought to guard it; and, if there be who shall doubt that, I have enow to prove what I say to be true: and thou, if thou hast been here, thou hast gone lawfully from hence; and should there be who shall doubt that, I have enow who know it."

20. We say, although the defendant shall have given an answer before he has been questioned by the plaintiff, the answer is nugatory until he hear the claim; and then let him answer.

21. And after they have finished their two pleadings, in the manner we have said before, let the judge ask them whether that which they have said will suffice; and let him ask them whether they will to amend their pleadings; and if there be who should will it, let him be permitted; and if no one will it, let the judge take their two pleadings, and state them; and after he shall have stated them, let the judges go out, and the priests or the priest along with them, and an apparitor with them, to prevent other persons from coming to listen to them. If a person come to listen to them, he is to pay three kine as camlwrw (fine) to the king; and if the king be in the place, or in the field, he is to pay a double

camlwrw. Then, after they shall be seated in their judgment-place, it is right for the priest to pray to God, that God may show them the right, and for them to chaunt their Pater; and after the Pater it is right for the judge to state the two pleadings a second time.

22. And, if it should be necessary for them to interrogate, (to inquire for the guarantee or aid) let two of them be deputed to question. And if it should be necessary for the party interrogated to consult, let them go, with the permission of the judges, to their consultation; and the number to go are those taking part in the pleadings, and no more, with a servant sent by the lord with them, to prevent any person from taking a part in the consultation with them; and if any person come and should counsel them, let him pay a camlwrw to the king, and the counsel be nugatory; and the distance they are to go to take counsel is to be as far as the judges go to settle their decision. And, after the consultation shall be ended, let those two come to the judges and state to them the consultation.

23. If no interrogation be necessary, it is right to permit them their arddelw (a vouchee of defense); and to send two men to inquire who are their evidences and their guardians, and where they are: if they say that they are in the field, let them be brought forward; if they say that they are in the same cymwd (territorial division) with them, let a period of three days be given them; if they say that they are in the next cymwd, let a period of nine days be granted them; if they say that they are in another country, or that they are separated from them by flood and ebb, a period of a fortnight from that day, if it be before mid-day; if after mid-day, a fortnight from the morrow following; and that day a day to lose and gain: and the pledges to be in the king's prison until that day; and every one ordered to come prepared with all their requisites on that day to the field: whether the two parties be assenting or not, is it not a day for legal decision?

24. On the third day after coming face to face, it is right for every body to sit in his place, in the same manner as he sat on the former day: and if any of the persons be dead who attended the pleadings at their commencement, others are to be put in their places. And after they are so seated, it is then right for the plaintiff to tender his requisites, including his witnesses, and his guardians, and say, that he is prepared, having his requisites with him, as he promised. Then it is right for the defendant to reply; and the answer he is to give is, that he is prepared, having

his requisites with him, as he promised. Then it is right for the king to order the pledges to be shown in the field, for they are the sureties. And then after the pledges are shown, it is right for the king to order the apparitor to proclaim silence in the field: and then it is right for the judge to announce the punishment for breach of silence, that is, three kine as camlwrw (fine), or nine score of silver, and the word spoken to be nugatory. And then it is right for the plaintiff to remind the judges, that it is he who first promised his witnesses and his guardians; and that he is entitled to examine them first. Then it is right for the judges to order him to produce his guardians and his witnesses, to be examined; and then it is right for him to bring them near him and show them; and those he promised are such as he named on the first day. The defendant is not then to object to any of them before hearing their evidence; because he knows not but what they may say may be advantageous to him; and whichsoever of them he may object to, before knowing what he may say; let such one stand. The defendant, however, may ask, whether they have privilege, so that they ought to be witnesses; and if they have, let them come forward: and the cause why he may ask that is, that an alltud (foreigner or person from another part of the island) cannot be an evidence concerning an hereditary "Cymro" (Welshman); and neither can a woman concerning a man: and, in addition to that, there are many persons who cannot be evidences, nor guardians, on account of privilege; and therefore it can be no detriment to the defendant to say that.

25. If the defendant promised witnesses better than those promised by the plaintiff; either from their privilege being higher, or from their being more numerous; and he willeth to support that point, it is right for him to show them; and after he shall have shown the witnesses, it is not right for the plaintiff then to object to them. And then it is right for the judge to ask the plaintiff: "What is the privilege of thy witnesses?" Then it is right for the plaintiff to state the privilege of his witnesses, whether maers (bailiffs), or canghellors (officer to determine disputes among the king's villeins), whether monks, or teachers, whether priests or scholars, or privileged laymen. After the judge has asked the plaintiff the privilege of his witnesses, it is right for the judge to ask the defendant the privilege of his witnesses; and then it is right for the defendant to state the best privilege of his witnesses. Then it is right for the judge to recapitulate the privilege ascribed by the two parties to their witnesses.

26. Then it is right for the judge to ask the evidences, will they abide by what is required at their hands. Here all the evidences say, they will. Here all of the two parties doubt the evidences of each other, that they will not carry it to the extremity, though they may so speak: then it is right for the judges to put them to the relics; and after they shall have put them to the relics, it is right for them to withdraw, and decide upon what they deem most right from what they have heard. And if they see that the witnesses of one party are better than those of the other, let them decide against him who has the worst witnesses: if their witnesses be equal, let it be decided against the defendant; for he promises witnesses which should be better than the other's, and he failed. And then it is right for the judges to decide for the plaintiff to take the land, in the condition it was in, when he was unlawfully ejected from it. If the defendant had promised equal witnesses, and they had been found equal, it would have been an equality, and it should have been shared.

27. After that it is right for the judges to prove the guardians, to ascertain whether all of them affirm that the party they uphold be a proprietor; and if the guardians of both parties affirm that each is a proprietor, and they be doubted, it is right to put them to the relics; and let the party whose guardians shall recede lose the land.

28. If the guardians of both parties stand, it is an equality; and where there shall be an equality it is shared.

29. Although he be adjudged to have the land, the person who was in prior possession is not to quit on his account, if he can obtain a house with gable in the same place, and the two lands equal, to prevent his being ejected from thence: and he is not to give unprivileged land, instead of land having privilege; such as that of the office of a canghellor (officer who holds pleas to determine disputes), or of a maer (bailiff), or other franchise.

30. Then it is right for the judges to return to their judgment-place; and then it is right for them to take security from the two parties, to abide by the judgment; and take surety for their fee. Then the judges are to state the two pleadings, and after that state their judgment; and then the king is to liberate the pledges from their prison.

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BOOK III

PROOF BOOK

Preface: The law of the functions of a judge.

Whosoever may will to undertake judiciary functions, it is right for him to understand this book, so that it may be fitting for him to accept judicial functions; and when his teacher shall find him to be competent, let him commend him to the judge of the court; and the judge of the court is to prove him, and if he find him competent is to recommend him to the lord; and the lord is to invest him with judicial functions; and thenceforth his decisions are to be of authority: and he is to pay twenty-four pence to the judge of the court as his fee. If, from thenceforth, he should pronounce an unjust sentence, he is not entitled to his tongue, unless he redeem it for its worth in law. Should a party enter into a mutual pledge with him, and he be found in the right, he is to have gwynebwarth (fine payable for insult) from the person who shall have so mutually pledged with him; and a camlwrw (fine of three kine) to the lord. A judge is not to receive a pledge after quitting his judgment seat, unless he himself will it: and he is not to receive one from a laic, unless promising a more correct decision by another judge, than that pronounced by him.

Chap. i. Of the nine accessories of galanas this treats.

1. The nine accessories of galanas.

2. The first is, to point out the person to be murdered, to the person who is to murder him: and that person is called a bloody-tongue.

3. The second is, to counsel the murderer to kill the other.

4. The third is, to consent to the murder.

For each of those three accessories, if denied, the oaths of one hundred men are to deny it: if he confess it, let him pay nine score of silver.

5. The fourth is, to be a spy.

6. The fifth is, association with the murderer.

7. The sixth is, to go to the trev (territorial division of land), wherein the person is who is to be killed, with the murderer.

To deny each of those three, the oaths of two hundred men are required: or twice nine score of silver, if acknowledged.

8. The seventh is, to be aiding.

9. The eighth is, to hold the person to be killed, until the murderer come to kill him.

10. The ninth is, to see the person murdered in his presence, without rescuing him.

For each of those three, if denied, the oaths of three hundred men are required: or thrice nine score of silver, if acknowledged.

11. Some say, that the kindred are to have that money, together with the denial; because those accessories being the cause of the murder of their relation, they are to have that money, and to deny blood and wound and killing of their relation, they are to have the raith which we have mentioned above; the law, however, says, that no one is to have both the denial and the money; and that they are not to have that denial and the money; since the kindred are only to have the saraad (fine) and galanas of their relation; and that in such instance there is neither assault, nor battery, nor blood, nor wound, nor loss of life; and where such do not occur, there is neither saraad nor galanas (sum assessed upon the criminal and his relatives as retribution for murder); and therefore the kindred are to have nothing from the accessories aforesaid. It is wrong to commit those accessories aforesaid, and therefore the lord is to have a camlwrw (fine of three kine) for them, according to the degree of the accessories; one singly, another two-fold, another three-fold, since no fighting took place there; and, if there had been fighting, there would have been a dirwy (fine of 12 kine) to the lord. The amount of a dirwy is three pounds, or twelve kine: the amount of a camlwrw is three kine, or nine score of silver.

12. Whoever is a murderer, the full galanas (the sum assessed upon the criminal) falls upon him. And thus the galanas is to be shared: one third upon the murderer, and upon his father and mother, if they be living; and of that, two parts upon himself, and the third upon his father and mother; and of the third which falls upon the parents, two pence upon the father, and one upon the mother.

If the murderer have children, and they be of age liable to pay, he is to pay as much as two of them; two pence upon the brother and one on the sister. Of the two parts that fall upon his kindred, the third upon the kindred of the murderer's mother, and the two parts upon the kindred of the father: and so the galanas proceeds from maternity to maternity unto the seventh descent, or the seventh maternity: for the children of the first mother are brothers; and the children of the grandmother, are first cousins;

and the children of the great-grandmother, are second cousins; and the children of the mother in the fourth degree, are third cousins; and the children of the mother in the fifth degree, are fourth cousins; and the children of the mother in the sixth degree, are fifth cousins; and the children of the mother in the seventh degree, are sixth cousins; and galanas goes no further than that. Though only two or three of the degrees should be ascertained, let the galanas be cast upon them; and that which falls not upon them, is to be shared upon the families from whom the father is descended, rating two shares upon the stock.

13. Upon the kindred after the sixth cousin, the spear penny is to be assessed; and that goes to assist the murderer. The manner it is exacted is, the murderer is to take a servant of the lord, carrying with him a relic; and wherever he shall meet with a person beyond the seventh degree of kindred, let such person take his oath, that he is not descended from any of the four kindreds from which the other is descended; and unless he take that oath, let him pay a spear penny; and if he take the oath, he is to be exempted.

14. A woman does not pay a spear penny, for she has not a spear, but her distaff only; neither do clerks pay it: and a woman does not pay galanas, if she make oath that she shall have no children; neither do clerks pay it: and it is not paid by a boy under fourteen years of age.

15. The law of galanas.

Thus the galanas fine is to be exacted: the first third to the lord for exacting it; and the second third to the father and mother and their children; out of that, two shares to the father, and one to the mother: and of that which shall come to the father and the mother, two pence to the father, and one to the mother: and of what remains for the children, if there be children of the murdered man, two shares to them. And the two parts which go to the kindred are to be divided into three shares; and of that one third to the kindred of the mother, and the two parts to the kindred of the father. And so galanas is shared, and received, from third to third: and so the thirds are received, in every one of the triads, between the lord and the kindred. The eldest son is to point out the offspring of his father, and his family; and attend the servants of the lord in collecting the galanas.

16. The period for galanas is a fortnight, after being summoned, for each lordship wherein they live, to apportion the payment; and twice that time for exacting the payment, and to assemble

them to pay it. And every lord is to have the exacting third in his own lordship. At three periods, and in three thirds, the galanas is to be paid; two periods for the kindred of the father, and one for the kindred of the mother; because two-thirds fall upon the kindred of the father, and therefore they are to have two periods. At the first period for the kindred of the father to pay one of their thirds, they are to have the oaths of one hundred of the best men of the other kindred, that their relation is forgiven; and at the second period, on their paying their second third, they are also to have the oaths of another hundred men of the other kindred, that their relation is forgiven; and those of the best men of the tribe; and at the third period, the kindred of the mother are to pay their third; and then they are to have the oaths of a hundred men of the other kindred, that their relation is forgiven: and everlasting concord is to be established on that day, and perpetual amnesty between them.

17. The oaths of three hundred men of a kindred are required to deny murder, blood, and wound, and the killing of a person; and therefore it is right to give the oaths of three hundred men to release him; and for amnesty between the kindreds, the raith we have mentioned above.

18. To deny the killing of a person with savage violence, the oaths of six hundred men are required; for the galanas and its penance being double, so the denial also is to be double.

19. When a person is killed, saraad is done to him in the first instance, and that saraad does not augment; and, therefore, it is right to pay that saraad before the galanas; and if the man have a wife, let the third of the saraad be given to her, and the two parts be shared among the brothers, the cousins, and the second cousins; and if his father be alive, he is to have as much as two of the brothers; and if his mother be alive, she is to have as much as two sisters: and that is the best form; for they are the several persons who are to pay saraad with him, if he were to do saraad to another. Others say, that after one third is given to the wife, the other two parts are to be mixed with the galanas, and shared among the kindred.

20. The lord is to have the exacting third of the saraads, as of the galanases.

21. Neither clerks nor women are to have a share of the galananas, since they are not avengers: however, they are to pay for their children; or make an oath that they shall never have any.

22. Some of the judges suffer the mother, father, brothers,

sisters, and their offspring, to pay, with the murderer; for those persons would obtain one third of his galanas, if he were killed; so they likewise are to pay one third of galanas with him; and of that the murderer is to pay twice as much as the father; and the father is to pay twice as much as the son; and the mother is to pay as much as her son; and the brother pays as much as his two sisters; and of the murderer's proportion, the murderer himself is to pay as much as two of his sons. And that is the law of Howel.

23. A childless woman pays no galanas; and neither does she pay, who has ceased to bear children.

24. The galanas of the king of Aberfraw (princely seat of Venedotia) is his saraad threefold.

25. The galanas of the king's wife, his son, his edling (next in line), his nephew, and his chief of the household, is one third of the king's galanas: and their saraad is one third of the king's saraad.

26. The galanas of the king's daughter is half the galanas of her brother: and her saraad is in the same proportion, before she marries.

27. The galanas of a steward, a chief of a kindred, a canghellor (an officer who determines disputes), and a chief huntsman, is nine score and nine kine, once augmented: and their saraad is nine kine, and nine score of silver once augmented.

28. The galanas of each of the servants of the court is six score and six kine, once augmented: and their saraad is six kine, and six score of silver.

29. The galanas of a maer, and an uchelwr (high man), is as much as the galanas of two of the servants: and their saraad in the same proportion.

30. The galanas of a man with a family is four score and four kine augmented: his saraad is four kine, and four score of silver augmented.

31. The galanas of an innate boneddig (free Welshman), and of the king's alltud (person from foreign parts or another part of the island), is three score and three kine: their saraad is three kine, and three score of silver.

32. The galanas of the alltud of an uchelwr, is half the galanas of the king's alltud: and his saraad in the same proportion.

33. The worth of a bondman, if of this island, is one pound; if from beyond sea, one pound and six score pence. The saraad of a bondsman is twelve pence: six for a coat for him, three for

trousers, one for buskins, one for a hook, and one for a rope; and if he be a woodman, let the hook penny be for an axe.

34. If the bondsman do saraad to a free man, let his right hand be cut off; unless the lord redeem it: the hand of a bondman is of the same worth as the king's hand.

Chap. ii. Of the nine accessories of theft this treats.

1. Of the nine accessories of theft.
2. The first of them is, to point out the thing to be stolen.
3. The second is, to consent to the theft.
4. The third is, to give provision to the thief.
5. The fourth is, to go in his society and carry the provision.
6. The fifth is, to accompany him, and to break into the place whence the property is to be stolen.
7. The sixth is, to be an adviser to the thief, and a receiver of the stolen property.
8. The seventh is, to travel, by day or night, along with the thief.
9. The eighth is, to receive a share of the stolen property.
10. The ninth is, to receive worth from the thief for secrecy.
11. For each of those accessories, a dirwy is to be imposed, if acknowledged, having been previously concealed: the amount of the dirwy is twelve kine, or three pounds, to be paid to the lord: they are not to pay anything to the owner of the property, as they are not murderers. If they cannot pay the dirwy, the lord may banish them on account of it: he may, however, receive three pence in lieu of the three pounds, if he will, without infringing the law. If they be able to obtain the payment, they are not to be exiled, nor their property confiscated; nor to be executed.
12. If any of the accessories, which we have mentioned above, be denied, their denial is the same as the denial of a murderer. Others say, in respect to that raith, that five men, without alltuds, without nod-men, shall deny it: and that is correctly the law of Howel.
13. Thus theft is to be denied in the law of Howel: the oaths of twelve men, for a horse, or three score of silver; for that is the lowest value of a horse, in law: the half nod-men, and the other half not nod-men; and two parts of them are to be of kin to the father, and one third kin to the mother, and their relationship so near to the accused, as to pay or to receive his galanas.
14. To deny a horse-load, or an ox; for a horse may carry an

ox; the oaths of six men, and himself the seventh, and the half to be nod-men (men without note or mark).

15. To deny a swine, or a sheep, or a back-burthen; the oaths of five men, the half nod-men, the other half not nod-men, and himself the fifth; and then the raith is to be equally taken from the two kindreds; since there cannot be a third of four persons.

16. Those raiths are not required except to rebut a legal prosecution: a legal prosecution is the oath of the owner, that the person in question really stole the goods; for there cannot be a prosecution, except by the owner.

17. Though the owner of goods should say, orally, that a person has stolen them; yet if he bring it not to the test, we decide that the oath of the defendant alone is required to deny it.

18. Though the person who is not the owner of the relics prosecute another for theft; the oath of the defendant alone is sufficient to clear him: because no one but the owner is to prosecute for theft.

19. At present it is customary to require for every theft, whether great or small, the oaths of twelve men; and the half of them nod-men.

20. Though the raith of a person, concerned as an accessory, fail; he shall only be liable to dirwy (fine); unless it be minded to prosecute him for perjury.

21. Of a raith.

Though the raith for a criminal fail, whatever the amount of the theft he shall be accused of, he is not to be executed if he pay seven pounds; and, if he cannot pay, he is not to be executed, only exiled: for no one is to be put to death, upon whom nothing is found. Others say, that he is to lose his life, unless he obtain his worth.

22. Whoever is exiled by the sentence of the law, is to set out on his departure the following morning; and, from that time forward, a day is allowed for passing through each cantrev (largest fixed division of a district) belonging to the lord who shall exile him: and that is the delay for an exile.

23. Whoever shall catch a thief, with stolen goods in his possession, and let him go, either for relationship or for worth; if he confess, let him pay seven pounds; for, though the thief forfeit his life, he does not: if he be unable to pay seven pounds, let him be banished as a thief.

24. Whoever is exiled by the sentence of the law, and is found in the country, beyond the time assigned for remaining in the

country; let him lose his life, unless he find some one to buy him; for he is not to return to the country during the life of the lord who exiled him, unless by being pardoned.

25. The law concerning theft.

Any person soever, to whose house the track of a thief leads, and he shall be unable legally to trace it further; let his property be confiscated; and, if he have no property, let him be exiled.

26. Any person soever, in whose house, or in the purlieus of the house, wherein he is resident, stolen goods shall be found; although he may not be personally concerned in the theft, he ought, nevertheless, to prevent his house being a receptacle for the theft: and therefore we judge that house, with all in it, a deposit excepted, to be a halog-dy (a polluted house); for the owner of the deposit is not to guard another house from receiving theft, therefore he is not to lose his property.

27. There is in the law but one case wherein harrying confiscation occurs; and that case is, for homicide.

28. Whoever may will to make full information, let him go to the lord and say, that a person, whom he dare not mention, either on account of his rank, or of his property, has committed a theft: Then it is right for the lord to summon the priest to him, and state to him what has been imparted to him; and send the priest along with the informant to the church door, and let him charge him to beware of being guilty of perjury. Then, if he willeth to swear, let him swear first at the church door; secondly, in the chancel; and thirdly, at the altar. And from thence, let the priest return to the lord, and say, that he has had the whole; and the lord is to swear to having had full information, when he shall examine the person, in the courts; and against this nothing can be done. Still, he is not to lose his life for that, but is to be a saleable thief; and, unless he can obtain his worth, let him be exiled as a thief. Other of the laws allow him a denial against the prosecution by the lord, in the same manner as in a prosecution by the owner: and that form is mostly preferred by the men of Gwynedd.

29. If a person find the flesh of an animal that is not his own, whether killed by dogs, or hidden, and take it away without permission, a dirwy (fine) is payable for it, whether obtained by gift, or endowment, or purchase, even unto the hundredth hand: and therefore it is called the piece of a hundred perplexities: and beyond the hundredth hand it is not cognizable.

30. Whoever may will to detain stolen property in the hand of another, let him go to the thing he would detain, and ask: "Who

owns this?" If there be no one who shall own it, let him have permission to take the property; and after he shall have obtained permission, let him go to the judge; and according as the judge shall direct, let him take it, and swear to it.

31. If whilst detaining the property, an owner come and oppose him; let him ask: "Who owns this?" Then it is right for the owner to say, that it is owned by him. And then it is right for the plaintiff to say: "It is wrong for thee to own what is mine." And then it is right for the defendant to reply: "It is altogether denied; for, nothing of thine have I: and, since I have not; by what means did thy loss happen, and at what time didst thou lose it?"

32. It is right to ask and know this, because there are six ways in which a person may lose his property: and in three of those cases he can swear to it; and in the other three he cannot. The three cases wherein he cannot swear are, a deposit and loan, and hire, and favour; for it is not right to enquire where these are, or to enquire to whom they are gone. The other three, which it [is] right to swear to are, first, theft; the second, loss by negligence; and the third is, surreption: they are to be sworn to, because they were not received by another hand from his hand; therefore he can swear to the property, wherever he may see it.

33. Whosoever may will to swear to the property, is to do it in this manner. If he swear to what is inanimate let him swear to it, with his left hand upon any part thereof. If it be a living animal, let him swear to it, with his left hand upon the right ear of the animal, and his right hand upon the relics: and let the defendant place his right hand upon the left ear of the animal; and so let him swear to the plaintiff, that there was no owner to it, who ought either to purchase or to sell it, excepting himself, by right; and, moreover, that he did not part with it, either by gift, or loan, or deposit, or sell it; but that, either by theft, or surreption, or straying he lost it; naming the day or night in the week, and naming the week in the month, and naming the month in the season, and naming the season in the year, when it was missing.

34. There are three arddelws (vouchees of defenses) to an animal: birth and rearing; possession before loss; and arwaesav (person, or authority, a defendant avouches to be the guarantor of the right to property with which he is charged to be unlawfully possessed). To inanimate things there are only two: possession before loss; and arwaesav.

35. If a person seek his arddelw on birth and rearing, let him proceed thus: let him have guardians to speak to the mother's

being his property, and that the animal was born and bred in his possession, and was not out of his possession since its birth until that day. The guardians to be produced by him are, a neighbour above his hand, and another below his hand; that is, a man above his rank, and another below his rank; and, if he can obtain these, it will be sufficient for him.

36. If he choose his arddelw on possession before loss, let him swear to it, according to the form we have previously mentioned. After he has sworn to it, let him say that the animal was in his possession, either a week, or a month, or two, or a season, before the other had it; and that he has guardians lawfully to prove its being in his possession, whether a week, or a fortnight, or a month, or a season, before he lost it: if he can do this, it is sufficient for him.

37. If his arddelw is by arwaesav, let him say: "Who will arddelw or arwaesav this?" And if one be in the field, let his arwaesav take upon himself the theft; and let the other be free. If the arwaesav take it, let the claimant swear to it in his hand; and he is, if so minded, to seek another arwaesav, or another lawful arddelw; or let him fail in the cause.

38. It is not right that there should be a raith, after detention and swearing, only arwaesav, or custody before loss, or birth and rearing.

39. If a theft be found upon a person, and he assert that he is innocent of the theft, but that it was left with him against his will by another person, and so he had it in his hand, and the person say that it was stolen property; it is then right to adjudge him to produce a raith on that account: and this is the single case where a raith is adjudged after detention and swearing. And thus the theft may go from hand to hand, while there shall be found in the field one to own it.

40. If he find in the field one who will own it, with an arddelw of an arwaesav in another place, let time be given him to obtain his arwaesav; that is, three days, if in the same cymwd; if in the next cymwd, nine days; a fortnight, if in another country; and so it proceeds to the third hand; and after the third hand, the law admits of no delay: and if the third hand find in the field a person that will own it, it is right to allow it; yet there is to be no delay, but immediate law.

41. Whosoever shall fix his arwaesav upon another, and his arwaesav fail him; let him be himself an acknowleged thief; and that according to the amount of the theft found upon him.

42. By the law of Howel, for theft to the value of four pence, the thief is saleable; and for a greater amount forfeits his life. Others say, that for every four-footed animal that is stolen, either a lamb, a kid, or a pig, the thief forfeits his life: nevertheless, it is safest to restrict it to four pence.

43. Seven pounds is the worth of a thief who is to be sold.

44. He who forfeits life is not to lose any of his property; because, both reparation and punishment are not to be exacted, only payment of the property to the loser; and he is to pay the loser, because he ought not to leave a claim upon him unsatisfied.

45. In the law of Howel, there was a payment for theft, and a second payment; and then Bleddyn, son of Cyncyn, altered this rule, because it suffices to pay a person for his loss according to his oath. The property of the criminal is to go in the way he may bequeath it, unless he have children; but, if he have children, then he is to bequeath nothing, except his debts, and daered (revenue) to the church.

46. Concerning ebediw (a relief payable to the superior lord). The lord is not to have the ebediw of a person he may himself execute: if executed in another country, the lord is to have the ebediw.

47. There is to be no galanas (sum assessed upon the criminal and his relatives) for a thief; neither is there to be feud between two kindreds, on account of his execution.

48. The law says, in respect to "gwynwyr" (wandering collectors of alms) from another country who go thirds with their own lord; that, if caught, they are saleable thieves; and if killed, that galanas is due for them.

49. Traitors to a lord, ferocious men, and every person who forfeits his life by the sentence of the law; no galanas is due for them.

50. Ferocious men, if they deny their savage violence, are to make a denial doubly.

51. Savage violence is, rendering property useless to either the perpetrator, or the owner.

52. Theft is, everything that is denied of what shall be taken.

53. Surreption is, everything taken in absence, and not denied.

54. Violence is, everything taken in presence, and against consent.

55. Error is, everything that is taken instead of another. Neither a dirwy nor camlwrw, is payable for error, nor any thing, except compensation to the person for his property.

56. A bondman is not to be put to death, if his lord will redeem him; and, unless any thing be found in his hand, his lord may exculpate him; and for that cause it is customary to allow lords to exculpate their alltud servants.

57. Alltuds from beyond sea, or from another country, and speaking a different language, are not to be put to death, either for victuals or any other thing during three nights and three days; but they are to indemnify the owner for his property.

58. For a dog, or for a bird, or for any thing of that kind, there is neither dirwy, nor forfeiture of life; but camlwrw to the lord, and amends to the owner of the property.

Chap. iii. Of the nine accessories of fire this treats.

1. Of the nine accessories of fire.
2. The first is, giving counsel to burn the house.
3. The second is, consenting to burn it.
4. The third is, going for the purpose of burning it.
5. The fourth is, carrying the fuel.
6. The fifth is, striking fire.
7. The sixth is, procuring tinder.
8. The seventh is, fanning the fire until it shall kindle.
9. The eighth is, giving the fire to the person who shall burn with it.
10. The ninth is, seeing it burning.
11. Whoever may will to deny any one of these, let him give the oaths of fifty men, to deny it; and if it shall be proceeded with as theft, the one half nod-men, and the rest not nod-men; or let him pay for the whole.
12. Others say that no greater raith is required for theft, than twelve men; and that twelve man deny theft, the one half nod-men, and the other not nod-men; and that burning for theft is thus denied, because the theft is a greater crime than the burning.
13. Whoever shall burn a house, and that house burn another; let him pay for the house he set fire to: and thus let payment be made, from house to house, as far as the fire shall extend.
14. Whoever shall give fire to another to burn therewith, and he confess it; let him pay one third of the damage.
15. Whoever shall kindle a fire in a house that is not his own, is to be answerable for any damage that may occur, to the end of three nights and three days, from his act.
16. Whoever shall kindle a fire in a kiln, though it may be burned by another person, and shall not take security from the person

that makes use of it after him; let him pay one third of the damage occasioned by that fire.

17. Whoever shall take fire surreptitiously from a house; let him pay for his act, and his surreption.

18. Whoever shall ask for fire from a house, and it be given to him; he must pay for the damage it may do.

19. Whoever shall ask to borrow fire; let it come to him without claim against the lender.

20. Three fires for which no indemnity is to be made; burning of heath, in March; the fire of a smithy, in a hamlet, that is seven fathoms distant from the nearest houses, and which is covered with shingles, or tiles, or sods; and the fire of a bath, in a hamlet, that shall be seven fathoms from the other houses.

21. Whoever shall take a thing under his care as a deposit, or promise to keep it secure; let him pay for it, although burned, as before.

22. If a house in a trev take fire, through carelessness, let the owner pay for the two nearest houses that shall take fire; and thence onward, let them pay, from next to next, as they are bound to do.

23. Galanas does not follow fire, but the act of the hand itself that shall cause the fire.

24. Whatsoever person shall burn heath at any other time than in the month of March, is to pay for the damage.

25. Weaving-women who shall take webs, or other balls under their care, if they should be burnt, they are to pay for them; because they are to keep them against every loss.

26. No injury caused by fire belonging to one person to the body of another person is to be compensated; unless accompanied by the act of that person.

27. If swine enter the house and scatter the fire about, so as to burn the house, and the swine escape; let the owner of the swine pay for their act. If the swine be burned, it is an equation between them; as being two irrational things: and, therefore, where there is an equation, by law, there is to be nothing redressed, but one is to be set against another.

28. Let no one take away fire without leave; and, if he should do so, let him pay a camlwrw, though he do no damage with it.

29. Let no one give fire, without knowing what is to be done with it; and, if he should do so, let him pay one third of any damage.

30. If a person, in carrying fire from the house of another,

should occasion sparks to fly about; let him pay for his act; unless he can impute part of it to the fire.

31. If a person should go to dry corn upon the kiln of another person; he must answer for any damage that may arise, until the end of three nights and three days.

32. No person is to forfeit life for violence, because it is saraad to the person injured; for his property is taken before his face; and according to his privilege the saraad is to be compensated, and his property restored; and a dirwy (fine of 12 kine) to the lord.

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Chap. xxiii. Now of the members of the human body.

1. Of the worth of the nine coördinate members this is.

For each of the feet, six kine, and six score of silver; for each of the hands, six kine, and six score of silver; for each of the eyes, six kine, and six score of silver; for each of the lips, six kine, and six score of silver; for each separately, six kine, and six score of silver; and for the nose itself, six kine, and six score of silver, separately.

2. The worth of the ear, if it be cut off, two kine, and two score of silver, separately. If injured, so as to cause deafness, six kine, and six score of silver.

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4. The worth of the tongue itself is equal to the worth of all the other members, because it defends them.

5. The worth of one of the toes, a cow, and one score of silver.

6. The worth of the great toe, two kine, and two score of silver.

7. The worth of a finger, a cow, and one score of silver.

8. The worth of the thumb, two kine, and two score of silver.

9. The worth of its nail, thirty pence.

10. The worth of the upper joint of the finger, twenty-six pence and a halfpenny and a third of a halfpenny.

11. The worth of the middle joint, thirty-three pence and two parts of a halfpenny.

12. The worth of the lowest joint, four score pence; and that is the worth of the finger.

13. The worth of each of the teeth, a cow, and one score of silver.

14. The worth of each of the fang-teeth, two kine, and two score of silver; because they are the guards of the teeth.

15. The trunk itself is in worth equal to all those together. . . .

16. Of the three imminent dangers to a man this is.

The three imminent dangers to a man are: a stroke on the head, unto the brain; a stroke in the body, unto the bowels; and the breaking of one of the four limbs of the body.

17. The compensation for the medicaments is this.

For each, the person wounded is to receive three pounds from the one who shall have so wounded him; the amount likewise due from the person who shall wound him, for his medical treatment, is a pound, without food; or nine score pence, with his food, and the bloody clothes.

18. A tent.

An application of a tent, twenty-four pence.

19. Red salve. A medicament of red salve, twelve pence.

20. A medicament of herbs, four pence.

21. Of the amount of the food of the mediciner this is.

His food daily to the mediciner is one penny in value.

22. His light, every night, a penny likewise in value.

23. Of the three conspicuous scars this is.

There are three conspicuous scars: one upon the face; another upon the foot; and another upon the hand; thirty pence on the foot; three score pence on the hand; six score pence on the face.

24. Every unexposed scar, four pence.

25. The cranium, four pence.

For every broken bone, twenty pence; unless there be a dispute as to its diminutiveness; and if there be a dispute as to its size let the mediciner take a brass basin, and let him place his elbow upon the ground, and his hand over the basin, and if its sound be heard, let four legal pence be paid; and if it be not heard, nothing is due.

26. Of the worth of hair pluckt from the roots, and the compensation.

The worth of hair pluckt from the roots; a penny for every finger used in plucking it out, and two pence for the thumb; and two pence for the hair.

27. Of the worth of blood of free and bond.

The worth of the blood of a freeman, twenty-four pence.

28. The worth of the blood of a bondman, sixteen pence.

29. The saraad of every person is to be paid according to his privilege.

30. There are three effusions of blood not to be compensated;

blood from the teeth; blood from a scab; and blood from the nose; to the lord, however, a dirwy is to be paid for it; but nothing is paid to him whose blood is drawn, for it is apt to flow; his saraad, however, is to be paid to him.

Chap. XXV. Of corn damage this treats.

1. Every owner of corn is to mind his corn; and every owner of an animal is to mind his animal, within and without; and, therefore, it is right for every person to take upon his corn. Thus it is right to take for winter-tilth; money payment for it until until the feast of St. Bride; and thence onward, reparation for damage: for spring-tilth; from the feast of St. Bride until the calends of May, money payment; from the calends of May onward, reparation for damage.

2. At all times to release an animal impounded, money payment only is due; and it is thus that money is to be paid; a penny for a horse; a halfpenny for a bullock.

3. For a colt or filly, from the fourteenth day onward after it is foaled, a penny, like as for its mother.

4. A calf, from the time of its birth until the calends of winter, is to be impounded from one meal-time to another.

5. Lambs and kids, while they are sucking, are to be impounded from one meal-time to another; or else to be mixed with their dams: the period during which they suck is until the calends of May; and thence onward, for trespass upon corn, they rank with their dams.

6. The swine, the sheep, the goats, the geese, and the hens; the second choice of them is due.

7. The pigs, from the time they turn up the cow-dung with their snouts, are subject to the same law as their mother, for trespass upon corn.

8. In the law it was one from the swine, and one from the small animals, which we have mentioned above, though there might be only three of them; the cause was, the swine returned to the person who owned them, and one remained with the owner of the corn; but one is not to be taken of two swine, for the swine could not return to the owner of the swine, if it remained so. Then it was altered to one of every fifteen of the pigs; and one of every thirty sheep; and from the goats, the poultry, and the geese, one of every thirty, in like manner.

9. Poultry are not to be taken upon corn, except during the first fortnight after the corn is sown, before it springs; from that time

until it shoot into ear, they are not to be taken; but from the time when the grain is formed, they are.

10. Every crop that a person shall harvest, he is to look after; and the cattle are free: by the crop is understood, corn after it is severed from the land whereon it grew; the produce of an orchard; cabbage; flax, after it is cut, or in a garden uncut; tedded hay; thatch for houses; and their fence; leeks; and every thing that pertains to a garden. Let him fence so strong about his garden, that beasts cannot break into it; and if he do not, and it should be broken into, he is not to be compensated; except for the trespass of poultry and geese; because it is not possible to fence so as to exclude them, since they can fly.

11. The barns are to be open from the time the first sheaf is brought into them, until the calends of winter, to admit the air; and, if the corn be damaged during that period, the owner is to be compensated.

12. From the calends of winter onward, the barns shall be closed in the manner required; they are to be closed by three eatherings on the sill, and a wattle upon the door-way with three bands thereon, two on the back, and one on the front; and, if that be broken, the corn and the barn are to be compensated; the corn in the barn, by giving a whole sheaf for every damaged sheaf.

13. If a person find an animal upon his corn, and it be disputed whether he found it there; let it be determined by the oath of the taker.

14. If corn be damaged, and the animals be not overtaken upon the corn, let the oath of the owner exonerate them; for there can be no testimony as to an animal; for, if all shall assert that they saw them, it will not avail.

15. A voluntary oath is not to be taken concerning them, since it will not avail, though acknowledged, if the owner shall exculpate them.

16. If a horse be found stretching his neck over a hedge eating the corn, it is not right to take him, but to obtain compensation for the damage; unless he be exculpated.

17. If either a horse or other animal be found with its two fore-feet upon the corn, it is not to be taken, since it was not wholly upon the corn: and part is not the whole; and, if it be not cleared, the damage is to be compensated.

18. If a person tether his mare by the side of corn, and her colt damage the corn, and cannot be caught; let the mare be taken from the place she is in, and brought to the house; and let the

colt be detained in the house, and the mare taken back to her former place: and here the wild is caught by the tame: and that does not constitute an illegal act.

19. Calves, lambs, and kids need not be loosed by the taker, but at his will, between meal-times; for no animal will die, by being impounded from one meal-time to another.

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25. A foal following its mother is not to be taken, and that is called a darting foal.

26. Swine are not to be taken for trespassing upon corn, from the feast of St. John unto the calends of January; unless they be found in a barn, or in a meadow.

27. Whoever shall will to preserve a meadow, let him keep it, from the feast of St. Patrick unto the calends of winter: a meadow is land appropriated for hay only, and enclosed by a fence. It is to be preserved unto the calends of winter, because it is mowed twice in the year.

28. Whoever shall find an animal trespassing upon such a meadow, let him take thereon as upon corn. If he chance to find them thereon, and cannot overtake them, though confessed, damage to grass is not to be compensated.

29. Whoever makes a fence about his corn, let him take animals found upon the grass that may be therein, as well as upon the corn; because nothing is to depasture there.

30. No one, except a lord, is to have more than two reserves of grass, a field, and a meadow; and, if he will to keep it, let him obtain a cross from the lord, and under the sanction of that let him keep it.

31. Thus animals trespassing upon corn are to be impounded: if they be wild, they are to be taken and placed out in a yard; if they be tame animals, they may be impounded, in or out, at pleasure. If there be animals belonging to two different persons, they are not to be mixed together; and if they be animals of different species, they are not to be mixed; but, if they be placed together, every one of them is to be tied. It is not right to tie swine, only to take them. It is right to tie poultry and geese, in taking them.

32. If a person require a pledge for his corn, with the time of a pledge which shall lapse; no one is to give it, except for the time of a corn-pledge; and a corn-pledge does not lapse until the calends of winter.

33. Whoever is entitled to corn, either by surety; or for damage done by cattle in the harvest; or by purchase; and shall not demand it before the calends of winter; he is not afterwards entitled to it; because he has suffered the proper period for urging his claim to elapse: for it is not right to claim corn from one year to another.

34. Whoever in taking cattle shall injure them, whatever the nature of the injury, the taker is to pay for it; for the animals are to return home without claim, without surclaim, except payment to the taker of the property.

35. Whatsoever person shall impound an animal, and suffer it to graze; he is not to lose his claim, for doing more than right.

36. Whoever shall take animals, and they break out and get home, nothing is due for them; for it is not right that there should be two takings for one trespass.

37. Whoever shall impound an animal, and refuse a lawful pledge, requiring money; if the animal die, he is to pay for it.

38. Whoever shall take many animals, and detain one of them apart, for the act of the whole, and suffer the others to go away; he is only to receive what shall fall on that one animal.

39. Whoever shall find a small animal upon his corn, whether a sheep, a goat, or a swine; it is at the option of the taker, either to keep account of them, until one animal be due; or else a penny for a sheep, or a goat, after it shall have been taken five times; and a penny for the swine when taken, or reckon until a swine be wholly due.

40. Whoever comes to liberate animals for others, it is right for the taker to ask him, whether he will be responsible for them; and, if he will not be responsible, he is not to deliver them to him: and, should they so die in his pound, not one is to be paid for. If the other engage to be responsible for them in all things, let a pledge be taken from him, with a surety for its dilysrwydd (warranty by a seller of property that no claim can be substantiated to the ownership of the property other than his own): and, if another owner should come to claim that pledge, he must produce, of his own property, one equally good, before the other is to go from him.

41. The pledge that is given by a wife, the husband is not to nullify; and the pledge given by a husband is not to be nullified by the wife.

42. Whoever shall have had his corn greatly damaged by trespass, and find animals upon it, and demand from the owner of

those animals compensation for all the damage; he is not entitled to more than the owner of the cattle, on his oath, may pay him as their damage; whether that be much or little: and that is to be of the same kind of land, in the same course of tillage: and that is called compensation for damage: and it is to be claimed before the calends of winter.

43. Whoever shall remove his corn from the stubble to the ley, and make his rick upon the ley; if it be damaged there, he is not to receive compensation. And flax, not in a garden, is subject to the same law as such corn.

44. There is no person, whatever may be his pledge, that is exempt from compensating damage.

45. No person is to milk, or to make any use of cattle that are impounded, though he may be the owner of them; without the permission of the captor.

46. The taker is not to seek the owner of the cattle he may take; neither is he to conceal them; and if he should conceal them, and they die, or be lost, through his negligence; let him pay for them.

And so terminates concerning corn damage.

The proof book of the laws of Wales ends. Amen.

PART IV

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Translated by Rev. A. H. Sayce

Chapter XXIII

TRIALS

Section 1. EGYPTIAN

NO. 1. THE INSCRIPTION OF MES[1]

1. INTRODUCTION

(According to the estimate of Professor Loret, 3 or 4 horizontal lines have been lost at the beginning of the inscription. Their probable contents were as follows: a) the date at which the *procès verbal* was drawn up . . .; b) a narrative introductory to the depositions. . . . It was doubtless related how Mes laid a plaint before the Vizier and the Great Qenbet. A member of that court will have been sent as commissioner to the lands of Neshi, in order to examine the litigants and their witnesses. The only fragment of this narrative which remains states that some one (no doubt the commissioner of the Qenbet) brought the notables of the town to hear the depositions.)

. . . officer(?) brought the notables of the town to hear their depositions.

2. Deposition of the Plaintiff Mes

a. The Early History of the Estates of Neshi

What was said by the . . . of the bearer of weapons, who . . . Rameses, [Mes].

As for me, I am the son of Hui, the son of Urnero, [the daughter] of Neshi. A division of property was made [for] Urnero and her brothers and sister [in] the [Great] Qenbet [in the time of] Horemheb. They sent the priest of the litter Iniy, who was an officer of

[1] [This valuable record of a private lawsuit (an appellate proceeding) surviving from Pharaonic times was discovered by Professor Loret in the tomb of Mes at Sakkara. The translation is by Alan H. Gardiner, published by J. C. Hinrichs (Leipzig, 1905; "Untersuchungen zur Geschichte und Altertumskunde Ägyptens," IV, 3, herausgegeben von Kurt Sethe), and is reprinted with the consent of the publisher. (Price, Marks 9.60.)

This inscription might properly be entitled Mes *v.* Khay, appellant and respondent respectively; since it was an appeal by which Mes recovered ancestral property awarded to Khay by an earlier judgment. The text shows that the same property had been previously the subject of much contention among members of the family of Mes. Khay, through connivance with the priest Amenemiopet, who altered the public land register, and supported by forged title documents, had fraudulently gotten a decree in his favor to the estate in question. Mes overcame the forgeries on the

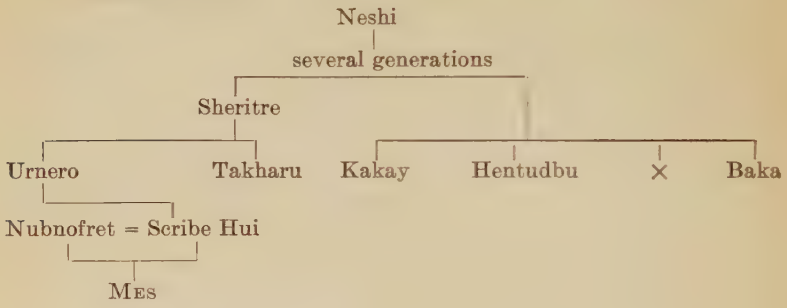
the Great Qenbet, to the Uahit of Neshi: and a division was made for me and my brothers and sisters; and they made my mother, the dweller in the town, Urnero administrator for her brothers and sisters.

Then Takharu, the sister of Urnero, [pleaded together with Urnero(?) before] the Great Qenbet. The Qenbet officer was sent forth, and they caused each of the six heirs to take [cognisance] of his portion. Now the king Amosis I had [given x arourae of land]

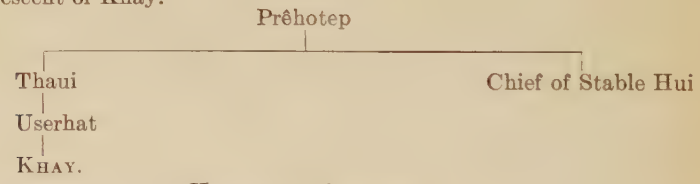
appeal by introducing evidence which showed clearly his descent from Hui and Urnero and Neshi, the former owners of the property.

The following genealogies show the descent of Mes and Khay:

1. Descent of Mes.



2. Descent of Khay.



HISTORICAL SYNOPSIS

Estates given to Neshi . . . . . *Temp.* Amosis I.

Sheritre . . . . . *Temp.* Akhenaten.

First lawsuit — Division of property for Urnero and her brothers and sisters. Urnero made trustee . . . . . *Temp.* Horemheb.

Second lawsuit — Takharu appeals and a new partition is made . . . . . *Temp.* 59th year Horemheb.

Third lawsuit — Hui litigates with Takharu and Smentoui . . . . . *Temp.* unknown.

Fourth lawsuit — Nubnofret against Khay. Khay prevails . . . . . *Temp.* 18th year Rameses II.

Fifth lawsuit — Mes appeals. . . . . *Temp.* unknown.

See, for further details of this litigation, the commentary of Mr. Gardiner, *op. cit.*, p. 23, seq. The date usually given for Rameses II is circa 1300 B.C.]

as a reward to Neshi my father. And further, since king Amosis I, this land was held by one (heir) after another until [this day].

Then Hui, my father, and his mother Urnero pleaded [together with their] brothers and sisters before the Great Qenbet and the Qenbet of Memphis . . . writing(?).

[Then my father(?) Hui] died.

b. The Litigation between Nubnofret and Khay

And Nubnofret my mother came to till the portion of Neshi my father, but she was not allowed to till (it). Then she laid a plaint against the administrator Khay, and they [caused them to appear before(?)] the Vizier [in] Heliopolis in the year 14 + x of king Rameses II. [Then . . . laid a plaint saying(?):] "Of a truth I am cast forth from this land of Neshi my father." Then she said: "Let there be brought to me the registers from the Treasury, and likewise from the Department of the Granary of Pharaoh. For I am well pleased to say, that I am the daughter of Neshi. Division was made for me together with them, but the administrator Khay does not know(?) my [right(??)] as a sister (??)."

The administrator Khay laid a plaint in the Great Qenbet in the year 18, and they sent forth the priest of the litter Amenemiopet, who was an officer of the Great Qenbet, together with him, having a false register in his hand, (whereby) I ceased to be a child of Neshi. And they made the administrator Khay [administrator] for his brothers and sisters in the place of my heirship, although [I was] an heir of Neshi my father.

c. Mes appeals against the Judgment in Favour of Khay

And now see! I am in the Uahit of Neshi my father, in which is the Hunpet of Neshi my father. Let me be examined and let me see whether(?) Urnero was the mother of Hui my father, [who was] called [the son of(??)] Neshi, although she is not duly enrolled in the register, which the administrator Khay made against me together with the Qenbet officer who came with him. I bring a plaint saying: it is a false register that has been made against me. For verily when I was examined before, I was found to be inscribed. Let me be examined together with my coheirs before the notables of the town, and let me see whether(?) I am the son of Neshi, or whether(?) it is not so(??).

3. The Deposition of the Defendant Khay

a. Khay's Version of the Early History of the Estates

What was said by the administrator Khay.

I am the son of the administrator Userhat, the son of Thaui . . . [the son of] Prêhotep. He gave to me his portion of lands in writing in the time of king Horemheb before witnesses: and it was the chief of the stable Hui the son of Prêhotep who had tilled it since the time of king [Amenothes(?)]. I succeeded to [him in] the time of Horemheb unto this day. Then the scribe Hui and the dweller in the town Nubnofret seized my portion of lands: and she gave them to the artificer Khay[iri(?)].

b. The Lawsuit between Khay and Nubnofret

Then I laid a plaint before the Vizier in Heliopolis, and he caused me to plead together with Nubnofret before the Vizier in the Great Qenbet. I brought my [testimonies . . .] in my hand since Amosis I, and Nubnofret brought her testimonies in like manner. Then they were unrolled before the Vizier in the Great Qenbet. And the Vizier said to [her(?)]: "These documents were written by one of the two parties."

Then Nubnofret said to the Vizier: "Let there be brought to me the [two registers from the Treasury and likewise from the Department of the Granary(?)." And the Vizier] said to her: "Very good is that which thou sayest." Then they brought us(?) downstream to Per-Ramessu. And they entered into the Treasury of Pharaoh, and likewise into the Department of the Granary of Pharaoh, and they brought the two registers before the Vizier in the Great Qenbet. Then the Vizier said to Nubnofret: "Who is thy heir [among] the heirs who are upon the two registers that are in [our] hand?" And Nubnofret said: "There is no heir in them." "Then thou art in the wrong," said the Vizier to her.

Then the scribe of the royal table, Kha, the son of Mentuemmin, said to the Vizier: "What is the decision which thou makest with regard to Nubnofret?" And the Vizier said to Kha: "Thou belongest to the Residence. Go then to the Treasury, and see how the matter stands with her." And Kha went out, and he said to her: "I have examined the documents. Thou art not inscribed in them."

Then they summoned the priest of the litter, Amenemiopet, and they sent him forth, saying: "Call together the heirs, and

show unto them the lands, and make a division for them." So did they command him together with the Qenbet of Memphis.

Then I sent the . . . , Ruiniuma(?) . . . who was overseer of horses. And the officer of the Qenbet, Amenemiopet summoned Mesmen(?), saying, "Come": . . . Then they summoned him(?) to the West bank. And they gave to me 13 arouræ of land and they gave lands [to the coheirs(??) before] the notables of the town.

4. THE EVIDENCE

a. Sworn Depositions of the Litigants and the Witnesses

What was said by the goatherd Mesmen(?).

"[By Amon and by the Prince,] I speak by the truth of(?) Pharaoh, and I speak not falsely; and if I speak falsely, may [my nose and my ears] be cut off, [and may I be transported to] Kush. The scribe Hui was the son of Urnero, and, as they say, the son of Neshi. I saw . . . Urnero . . . lands."

What was said by the administrator Khay.

"By Amon and by the Prince. The scribe Hui was the son of [Urnero] the daughter of Neshi. And if . . . [say(?)]: 'It is not truth,' then let me be put to confusion(?). By Amon and by the Prince . . . not . . . cultivate . . . beyond them. Their harvest was taxed(?) . . ."

What was said by (?).

"By [Amon and by] the Prince, if they examine and if they find that I cultivated . . . portion . . . me, let me be put to confusion(?)."

What was said by the priest of the temple of Ptah . . .

"By Amon and by the Prince, I speak [in truth, and I speak not] falsely; and if I speak falsely, may my [nose] and my ears be cut off, and may I be transported to Kush. I knew [the scribe Hui(?)] the son of Urnero. He cultivated [his] lands from [year] to year, and he cultivated them saying: 'I am the son of Urnero, [the daughter of Neshi'(?)]."

[What was said by] the honey-maker of the Treasury of Pharaoh Hori(?).

"By Amon and by the Prince, if I speak falsely, may my nose and my ears be cut off [and may I be transported to Kush. The scribe Hui] was the son of Urnero; and moreover, Urnero was the daughter of Neshi."

What was said by the chief of the stable Nebnefer.

Likewise, saying: "As for the scribe Hui, he used to [cultivate his lands from year] to year, [doing] all that he desired. And they gathered in for him the harvest of his fields year by year. Then he pleaded [together with the dweller in the town] Takharu the mother of the officer Smentoui. And then he pleaded together with Smentoui her son, and they gave [the lands to] Hui, and they were duly confirmed (to him)."

What was said by the . . . Buthartef.

Likewise, saying: "The scribe Hui was the son of Urnero and Urnero was [the daughter of Neshi]."

What was said by the dweller in the town Peihay.

"By Amon, and by the Prince, if I speak falsely, may I be sent to the back of the house. The scribe [Hui was the son of] Urnero; and moreover, Urnero was the daughter of Neshi."

What was said by the dweller in the town Pipuemuia.

Likewise.

What was said by the dweller in the town Tuy.

Likewise.

b. Documents cited as Evidence

(Some 4 or 5 horizontal lines are entirely lost at the top of the S. wall. As to their contents nothing certain can be conjectured. But . . . it is to be presumed that the preceding lines likewise contained documentary evidence. It is impossible to say whether any sentence marking the transition from the oral to the documentary evidence was contained in the lost lines.). . .

. . .

What was said by the dweller of the town Maia before the [Great] Qenbet in [the time of??] . . .

" . . . Urnero his mother took the(?) . . . leave to me my grain. I brought to me the administrator . . . By Amon and by the Prince . . . in that I am deprived of my portion."

A copy was made, and [it was placed in] the judgment-hall of Pharaoh. . . . judges. List of the same: —

The overseer of the town and Vizier thereof(?) . . .
The . . . of the cavalry . . . a.
The overseer of infantry Iia.
The chief of auxiliaries Hui.

. . .

The royal messenger(?) Runry.
The royal messenger(?) Amenmes.
The scribe of . . .
The scribe of . . . mes.

Before the Qenbet on this day.

Year 59 under the Majesty of King Horemheb.

Copy of the examination, which the priest [of the litter], Iniy, who was a Qenbet-officer, [made of] the Hunpet of the overseer of vessels Neshi, [which is in] the Uahit of Neshi.

"I came to the Uahit of Neshi [the place where] the lands are, concerning which the dweller in [the town] Urnero, and the dweller in the town Takharu dispute. They called together the heirs of Neshi with the notables of the town, who make . . . [of] the Hunpet [of] Neshi, in order to hear their depositions. List of the witnesses of Neshi: —

The dweller in the town, Kakay.

The dweller in the town, Hentudbu.

The . . .

The . . . Baka.

Total, 4 persons.

List of the witnesses who came from the town to swear to them(?)

The field-labourer, Heriherneferher.

. . .

. . .

. . .

What they said with one voice:

"By Amon and by the Prince, we speak in truth . . ."

[What was said by . . .]

"As for me, I was in the town . . . day. I saw the Hunpet of the overseer of vessels Neshi, when it was held by the co-heirs.

. . . in the time of the Enemy of Ikhitaton . . . Ikhitaton [where] Pharaoh was(?). And the dweller in the town Sheritre, the mother of the dweller in [the town] [Takharu] . . . Iriy was . . . for the Hunpet cultivating . . . Sheritre the mother of Takharu."

5. VERDICT?

Now after . . .

(Here the inscription comes to an end.)

NO. 2. ABSTRACT OF CRIMINAL PROCEEDINGS IN A CASE OF CONSPIRACY[1] IN THE TIME OF RAMESES III

This translation is of a hieratic text contained in a papyrus belonging to the Royal Museum at Turin, and known to scholars under the title of "Le Papyrus Judicaire de Turin," given to it by M. Devéria, who first published it in the "Journal Asiatique" of 1865, with a translation and dissertation extending over several numbers of the journal. The whole has also appeared as a separate publication. The document is unfortunately imperfect; the first page, which certainly set forth the nature of the *case*, being almost entirely destroyed. This defect is the more to be lamented because the pages which have been preserved throw but little light upon the nature of the crimes of the accused persons. There was undoubtedly a conspiracy against the person of the sovereign, but we are left in the dark as to the kind of mischief intended by the conspirators. The text abounds in other difficulties which our present imperfect acquaintance with Egyptian archæology does not enable us to overcome. One of the criminals, for instance, is "Fan-bearer of the Auit." I confess that I do not yet know of any satisfactory translation of the word *Auit*, which represents a corporation of some kind. M. Devéria connected the word with the notion of slaughter, but M. Chabas has shown how utterly erroneous is this supposition. Nor am I able to explain the exact nature of the *Pa-chent*, which was apparently a part of the royal palace or court. It is certainly a gross error to translate the word by "harem," as M. Devéria has done. "Women of the Pa-chent" no more imply an Egyptian harem than "Ladies of the Bedchamber" imply an English institution of the same nature. We must be content for the present with leaving certain Egyptian words untranslated, till we are sure that the right English equivalent has been discovered.

The most faulty portion of M. Devéria's translation is the royal declaration at the commencement. According to it Rameses handed the accused over to a tribunal, not for trial but for execution, as if the judges were but the instruments of the despot's arbitrary will. M. Chabas has, in a most valuable dissertation on the subject ("Mélanges Egyptologiques," *3ème séries*, *1ère livraison*), shown that such a translation is in direct opposition to the original text, according to which the Egyptian monarch, far from asserting the criminality of the accused, declares that "as to the talk which men hold he knows it not," that the judges are to find out the truth, to punish the guilty, but to beware of inflicting chastisement upon those who do not deserve it.

The name of one of the criminals, the major-domo, Paibakakamen, occurs on a contemporary document of which three fragments remain. (Two of these fragments are called the *Leé Papyrus*, and a facsimile of them is given in Sharpe's "Egyptian Inscriptions," Part II., Plates 87 and 88. The third is called the *Papyrus Rollin*, and the facsimile of it was published by M. Devéria, in his dissertation on the Turin Papyrus.) This latter text, which was also an abstract of criminal proceedings, dealt with a case of sorcery. A book of magic receipts, wax figures and love charms are mentioned, and a hand is said to have been paralyzed. Paibakakamen is named as having received the wax figures and prescriptions for paralyzing human limbs.

It will be remarked that no less than three of the persons named in the earlier part of the document as members of the judicial commission (Paibasat, the scribe Mai, and the fan-bearer Hora) appear later on in the position of accomplices in the conspiracy, and are condemned to death.

[1] [Translated by P. LE P. RENOUF. Reprinted, by permission, from "Records of the Past," Vol. viii, p. 53 *seq.*, Samuel Bagster and Sons, London. Rameses III (circa 1200 B.C.) is reputed to be the founder of the 20th dynasty. Some writers say that he was the second king of this dynasty. He is supposed by other writers (probably incorrectly) to be the Pharaoh of the Exodus.]

The expression *àu-f mut-nef t'esef*, which I have translated "he suffered death," is a very remarkable one. The pronoun *t'esef* has a reflexive force, and very emphatically marks the agent of the deed or the efficient cause of the state expressed by the verb.

The grammatical reasons are sufficient to convince me that all the criminals here condemned to death suffered by their own hand. There ought, surely, to be nothing startling in this if we remember that in the most civilized state of Greece (and indeed of all antiquity) persons condemned to death were ordinarily obliged to be their own executioners.

PAGE 2

1 Those whom the land accuseth I give them in charge of the Overseer of the Treasury MENTU-EM-TAUI, the Overseer of the Treasury PAIF-RE-UT,
2 the Fanbearer KARE, the Comptroller PAIBASAT, the Comptroller KATENTEN, the Comptroller BARMAHAR,
3 the Comptroller PA-ARISENNU, the Comptroller TAHUTI-RECHNEFER, the royal Reporter PEN-RENNU, the Scribe MAI,
4 the Scribe PA-RA-EM-HEB of the Library, HORA the Fanbearer of the Auit;
5 to wit: As to the talk which men hold I know it not; go ye and judge them,
6 going and judging and inflicting death upon their bodies who have inflicted death with their hand.
7 I know them not . . .[1] and chastising the others . . .[1] in very truth I know them not. Now then
8 go . . .[1] take heart and beware of inflicting chastisement
9 upon . . .[2]

PAGE 3

1 As to all that hath been done, those who have done it,
2 let all that they have done be upon their head.
3 I am a protector and a defender for ever. I am
4 with the Kings of Justice who are in presence of
5 AMEN-RA, the King of the gods and in presence of the watchful one, the everlasting King.

PAGE 4

1 Persons brought up for the high crimes which they had committed and presented at the seat of judgment in presence of the high magistrates of the seat of judgment in order that they

[1] Lacunæ.

[2] The gap here destroys the context. M. Chabas translates, "Gardez vous de faire châtier quiconque serait prévenu de délit. Et sur qui cela ne tombe pas, relativement à eux. Ne resistez pas."

should be judged by the Overseer of the Treasury MENTU-EM-TAUI, the Overseer of the Treasury PAIF-RE-UT, the Fanbearer KARE, the Comptroller PAIBASAT, the Comptroller KATENTEN, the Comptroller BARMAHAR, the Comptroller PAARISENNU, the Scribe MAI, the Scribe PA-RA-EM-HEB of the Library, HORA the Fanbearer of the Auit, who judged them and found them guilty and caused their chastisements to be inflicted upon them and their crimes were done away with.[1]

2 The great criminal PAI-BAKA-KAMEN, a Major-domo. He was brought up on account of his offence which he committed for the sake of TAIA and the women of the Chent. He had made one with them. He had carried abroad their words to their mothers and sisters who were there to stir up men and incite malefactors to do wrong to their Lord. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

3 The great criminal MEST-SU-RA, a Comptroller. He was brought up on account of his offence which he committed for the sake of PAI-BAKA-KAMEN, the Major-domo, with the women in stirring up malefactors to do wrong to their Lord. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

4 The great criminal PA-AN-AUK, royal Overseer of the royal . . .[2] of the Pa-chent on service. He was brought up for having made one with PAI-BAKA-KAMEN and MEST-SU-RA. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

5 The great criminal PEN-TUAUT, royal Scribe of the PA-CHENT on service. He was brought up for having made one with PAI-BAKA-KAMEN and MEST-SU-RA, and the other criminal Overseer of the royal [2] and the women of the Pa-chent. He was presented before the great Magistrates of the seat of judgment. They in-

[1] Expiated(?). [2] The sign which occurs here is doubtful.

vestigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

6 The great criminal PA-NIFU-EMTA-AMEN, Examiner of the Pa-chent on service. He was brought up for giving ear to the conversation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

7 The great criminal KARPUSA, Examiner of the Pa-chent on service. He was brought up for giving ear to the conversation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

8 The great criminal CHA-EM-APT, Examiner of the Pa-chent on service. He was brought up for giving ear to the conversation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

9 The great criminal CHA-EM-MAA-EN-RE, Examiner of the Pa-chent on service. He was brought up for giving ear to the conversation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

10 The great criminal SETI-EM-PA-TAHUTI, Examiner of the Pa-chent on service. He was brought up for giving ear to the con-

versation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

11 The great criminal SETI-EM-PA-AMEN, Examiner of the Pa-chent on service. He was brought up for giving ear to the conversation held by the men conspiring with the women of the Pa-chent and not bringing it forward against them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

12 The great criminal UARMA, a Comptroller. He was brought up for having given ear to what was said by the Major-domo. He turned away from it but concealed it and did not report it. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

13 The great criminal ASH-HEBS-HEB, a servant of PAI-BAKA-KAMEN. He was brought up for having given ear to what was said by PAI-BAKA-KAMEN, he conversed with him, and did not report it. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

14 The great criminal PA-RAKA, Comptroller and Scribe of the double house of life. He was brought up for his offence which he committed for the sake of PAI-BAKA-KAMEN, for he heard words from him but did not report them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

15 The great criminal REBU-ININI, a Comptroller. He was

brought up for his offence which he committed for the sake of PAI-BAKA-KAMEN for he heard words from him but did not report them. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

PAGE 5

1 The wives of the men of the gates of the Pa-chent when in company with the men had communication in words. They were brought up before the high Magistrates of the seat of justice who found them guilty and caused their chastisements to be inflicted upon them.

2 The great criminal PAI-ARI-SELMA, Overseer of the Treasury. He was brought up for his offence which he committed for the sake of the great criminal PEN-HUI-BAN; he had made one with him in inciting malefactors to do wrong to their Lord. He was presented before the great Magistrates of the seat of judgment. They investigated his crimes and found the verdict, that he had committed them and that his crimes had been consummated by him. The Magistrates who judged him caused his punishment to be inflicted upon him.

3 The great criminal BAN-EM-USET, Captain of archers of Ethiopia. He was brought up on account of the message which had been sent by his sister of the Pa-chent on service, to this effect, Incite the men to commit crime, and do thou thyself come to do wrong to thy Lord. He was presented before KATENTEN, BARMAHAR, PAARI-SENNU, TAHUTI-RECH-NEFER, who judged him and found him guilty and caused his chastisement to be inflicted on him.

4 Persons brought up for their crimes and offences which they committed for the sake of PAI-BAKA-KAMEN, PAI-AS, and PEN-TA-URA. They were presented before the high Magistrates who judged them and found them guilty and disposed of them in the place of judgment. They suffered death,[1] no expiation was made for them.

5 The great criminal PAI-AS, Captain of archers; the great criminal MESSUI, Scribe of the Double House of Life; the great criminal PA-RA-KAMEN-EF, superior Officer; the great criminal

[1] On this expression see the last paragraph of the introductory note.

I-ARI, Overseer of the libations of Sechet; the great criminal NEB-TEFAU, Comptroller; the great criminal SHAT-MESTER, Scribe of the Double House of Life.

6 Persons brought up for their crimes to the seat of justice before KATENTEN, BARMAHAR, PA-ARI-SENNU, TAHUTI-RECH-NEFER (MERTI-US-AMEN), who judged them for their crimes, and found them guilty and disposed of them at the place. They suffered death.

7 PEN-TA-URA, who is also called by another name. He was brought up on account of his offence which he committed for the sake of TAIA his mother, when she communicated words with the women of the Pa-chent with intent of doing wrong to his Lord. He was presented before the Comptrollers that he might be judged, who found him guilty and disposed of him at his place. He suffered death.

8 The great criminal HAN-UTEN-AMEN, a Comptroller. He was brought up on account of the crimes of the women of the Pa-chent. He was on the premises and heard, but did not make a report. He was presented before the Comptrollers to be judged, who found him guilty, and disposed of him at his place. He suffered death.

9 The great criminal AMEN-CHAU, *Tennu*[1] of the Pa-chent on service. He was brought up on account of the crimes of the women of the Pa-chent. He was on the premises and heard but did not make a report. He was presented before the Comptrollers to be judged, who found him guilty and disposed of him at his place. He suffered death.

10 The great criminal PA-ARIU, Scribe of the royal [?] of the Pa-chent on service. He was brought up on account of the crimes of the women of the Pa-chent. He was on the premises and heard but did not make a report. He was presented before the Comptrollers to be judged, who found him guilty and disposed of him at his place. He suffered death.

PAGE 6

1 Persons who suffered punishment by amputation of noses and ears in consequence of the failure of the favourable evidence which they have given. The women departed, and arrived at the place where they now are and where they make a beer-

[1] *Tennu* is the title of an officer of exalted rank.

house[1] together with PA-AS, and their crimes are done away with.

2 The great criminal PAIBASAT, a Comptroller. The chastisement was inflicted upon him, and he was disposed of. He suffered death.

3 The great criminal MAI, a Scribe of the Library.

4 The great criminal TAIA-NECHTUTA, Officer of the Auait.

5 The great criminal NANAI, Superior of the Se-ashtu.

6 A person one with them who prevaricated with very evil words. He was disposed of, and no expiation was made for him.

7 The great criminal HORA, Fanbearer of the Auait.

NO. 3. SPOLIATION OF TOMBS[2]

This papyrus was purchased in the year 1857 from Dr. Abbott of Cairo, by the Trustees of the British Museum, and in 1860 a facsimile, preceded by an excellent preface from the pen of Dr. S. Birch, was published by them in the "Select Papyrus in the Hieratic Character." This eminent Egyptologist had already in 1859 drawn the attention of the scientific public to this ancient document by giving an account of it in the "Revue Archéologique" (Tome XVI. p. 257), under the title of "Le Papyrus Abbott, par S. Birch, traduction de F. Chabas." Since that time, and nearly simultaneously, two complete French translations have been published — one by M. F. Chabas, Chalon-sur-Saône, 1870, in his "Mélanges Égyptologiques" (troisième série, Tome I.); the other by M. G. Maspero, Paris, 1871, entitled "Une enquête judiciaire à Thebes au temps de la XX. Dynastie." Both translations are accompanied by an analysis, and the latter by a transcription of the hieratic text and an interlinear version.

The MS. consists of seven pages of clear and bold handwriting, regular at the commencement, but less carefully written as it approaches the end, until it becomes almost illegible on the endorsement which is not reproduced here, as it merely contains a list of names of no special importance for the present publication.

This valuable document throws considerable light upon the administration of justice in ancient Egypt, and shows the entire course of proceedings in a criminal case under the reign of Rameses IX. The style is clear and the action goes on in a connected and regular way. But what makes the sense of the translation somewhat ambiguous on a first reading is the difficulty of rendering it literally, and at the same time in good English, as the sentences are very long and frequently interrupted by explanatory phrases. [The time of Rameses IX is circa 1150 B.C.]

PAGE I

1 (The 16th year,)[3] the 18th day of Athyr, in the reign of the King of Upper and Lower Egypt, Lord of the two countries, NEFER-KA-RA SOTEP-EN-RA, the son of the Sun, Lord of Diadems,

[1] *Sic.* This was their occupation in penal servitude. Instead of *heket*, "beer," M. Devéria reads *heker* which he translates "torture."

[2] [Translated by P. J. DE HORRACK. Reprinted, by permission, from "Records of the Past," Vol. xii, p. 101 *seq.*, Samuel Bagster and Sons, London.]

[3] The words enclosed in brackets, thus, ( ), replace lacunæ.

2 (RAMESSU KHA-EM-UAS) MERER-AMEN, Beloved of AMEN-RA, the King of the gods, and of HAR-EM-AKHU, who gives life eternally and for ever.
3 (On that day were sent) the Examiners of the august necropolis, the Scribe of the Nomarch and the Scribe of the Overseer of the King's treasury,
4 (to the monuments) and chapels of the royal ancestors, and to the sepulchres and resting-places of the chanters
5 (and mourners) which are in the West-quarter of the city, by the Nomarch KHA-EM-UAS
the royal Controller, NES-SU-AMEN, Scribe of the King,
6 (the Major-domo) of the abode of the divine adorer of AMEN-RA, the King of the gods,
the royal Controller NEFER-KA-RA-EM-PA-AMEN, Reporter of the King,
7 (in order to investigate) concerning what the thieves had done in the West-quarter of the city, on which subject the Commandant, Chief of the Police, PA-AU-AA, of the very august Necropolis.
8 (of millions of years, of the) King, which is in the West of Thebes, had reported to the Nomarch, the Magistrates and the Examiners of the King.
9 (Functionaries) who went on that day with the Commandant, Chief of the Police, PA-AU-AA, of the necropolis:
10 the . . .[1] BEK-EN-UR-ENRU, of the palace,
11 . . .[1] of the necropolis,
12 . . .[1] of the palace,
13 . . .[1] of the palace,
10[BIS] the Chief of the Police, MENTU-KHOPESH-EF, of the palace,
11[BIS] the Scribe PA-A-EN-BAUK-HOR, of the Nomarch,
12[BIS] the great Scribe of the Store-house, PAI-NEFER, of the Overseer of the Treasury,
13[BIS] the Prophet PA-AN-KHAU, of the temple of AMEN-HOTEP,
14 the Prophet SAR-AMEN, of the temple of AMEN, of the cellars,
15 the Police-officers of the necropolis, who were with them.

PAGE II

1 Monuments, chapels and sepulchres examined on that day by the Examiners:

[1] Lacunæ.

2 The eternal horizon[1] of King SAR-KA, son of the Sun, AMEN-HOTEP, which is 120 cubits
3 deep in its principal chamber,[2] the long corridor belonging to it being at the north of the temple of AMEN-HOTEP
4 of the vineyard, of which the Commandant PA-SAR, of the city, had made a report to the Nomarch KHA-EM-UAS,
5 the royal Controller NES-SU-AMEN, Scribe of the King, the Major-domo of the abode of the divine adorer of AMEN-RA, the King of the gods,
6 and the royal Controller NEFER-KA-RA-EM-PA-AMEN, Reporter of the King, (all) high Magistrates, saying:
7 "The thieves have violated it." Examined on that day, it was found intact by the Examiners.
8 The monument of King SA-RA AN-AA, which is at the North of the temple of AMEN-HOTEP of the terrace.
9 This tomb is injured on the surface opposite the spot where the tablet is placed;
10 on the tablet is the image of the King, in a standing position, having between his feet his greyhound
11 named BEHHUKA. Examined on that day, it was found in good condition.
12 The monument of King NUB-KHEPER-RA, son of the Sun, ANTUF, was found to have been
13 pierced by the hands of the thieves, who had made a hole of two cubits and a half in its surrounding wall, and (a hole of) one cubit
14 in the great outside-chamber of the sepulchre of the Chief of the transportation of the offerings, AURI, of Pa-Amen,
15 which (tomb) is in ruins. It was in good condition, the thieves not having been able to penetrate into it.
16 The monument of King RA-SEKHEM-EM-APU-MA, son of Sun, ANTUF-AA. It was found
17 to have been pierced by the hands of the thieves at the spot where the tablet of the monument is fixed.
18 Examined on that day, it was found entire, the thieves not having been able to penetrate into it.

PAGE III

1 The monument of King RA-SEKHEM-SESHET-TAUI, son of the Sun, SEBAK-EM-SAU-EF.

[1] The tomb. [2] The one in which the mummy is deposited.

2 It was found that the thieves had violated it by undermining the chamber of the perfections [1] of the
3 monument, from the great exterior chamber of the sepulchre of the Overseer of the granaries, Neb-Amen, of the King Men-kheper-ra (Thotmes III.).
4 The place of sepulture of the King was found to be void of its occupant; so was the place of sepulture of the principal royal spouse,
5 Nub-kha-s, his royal wife; the thieves had laid hands on them. The Nomarch,
6 the Magistrates and Controllers investigated (the matter) and found the thieves having laid hands on them, a fact,
7 as far as the King and his royal spouse were concerned.
8 The monument of King Ra-sekenen, son of the Sun, Ta-aa. Examined on that day
9 by the Examiners, it was found intact.
10 The monument of King Ra-sekenen, son of the Sun, Ta-aa-aa, being King Ta-aa Second.
11 Examined on that day by the Examiners, it was found intact.
12 The monument of King Uat-kheper-ra, son of the Sun, Ka-mes. Examined on that day, it was (found) uninjured.
13 The monument of King Ahmes Sa-pa-ar. Examined and found intact.
14 The monument of King Neb-kher-ra, son of the Sun, Mentu-hotep, which is in the (region of) Sar; [2] it was intact.
15 Total of the monuments of the royal ancestors examined on that day by the Examiners;
16 found intact, 9 monuments; found violated, 1; total 10.
17 The sepulchres of the pallakides of the abode of the divine adorer of Amen-ra, the King of the gods; found intact, 2;
18 found violated by the thieves, 2; total, 4.

Page IV

1 Sepulchres and chapels in which repose the chanters and mourners, the women and men of the country,
2 in the West-quarter of the city. It was found that the thieves had violated them all, that they had torn their occupants
3 away from their coffins and cases, had thrown them into the dust and had stolen all the funeral objects which

[1] One of the names of the principal chamber of a tomb.
[2] A particular quarter of the necropolis of Thebes.

4 had been given to them, as well as the gold and silver and the ornaments which were in their coffins.

5 The Commandant, Chief of the Police, PA-AU-AA, of the very august necropolis, as well as the Chiefs of the Police and the Police-officers,

6 the Examiners of the necropolis, the Scribe of the Nomarch, the Scribe of the Overseer of the Treasury, who were with them, made a report about (these tombs) to

7 the Nomarch KHA-EM-UAS, the royal Controller NES-SU-AMEN, Scribe of the King, the Major-domo of the abode of the divine adorer of

8 AMEN-RA, the King of the gods, and the royal Controller NEFER-KA-RA-EM-PA-AMEN, Reporter of the King, (all) high Magistrates.

9 The Commandant of the West-quarter, Chief of the Police, PA-AU-AA, of the necropolis, placed the names of the thieves in writing

10 before the Nomarch. The Magistrates and Controllers arrested them and put them into prison; they cross-examined them and reported the state of things.

11 The 16th year, the 19th day of Athyr. This was the day on which started, in order to examine the great places [1] of the royal children, the royal wives

12 and the royal mothers, which are in the abode of the perfected,[2] the Nomarch KHA-EM-UAS, the royal Controller NES-SU-AMEN, Scribe of the King,

13 after having received the declaration of the worker in metal,[3] PAI-KHARI, son of KHARUI, born of MAI-SHERAU, of the West-quarter of the city, a man belonging to the servants

14 of the temple of USER-MA-RA MERI-AMEN (RAMESES III.) in Pa-Amen, which (temple) is under the direction of the First Prophet of AMEN-RA, the King of the gods, AMEN-HOTEP. This man, who was found on the spot,

15 was arrested, he having been (one) of three temple servants who were near the sepulchres, at the time when the Nomarch RA-NEB-MA-NEKHT made

16 his investigation in the year xiv.; he said: "I was in the tomb of the royal spouse ISIS of the King USER-MA-RA MERI-AMEN (RAMESES III.); I took away some

[1] The tombs.
[2] Tombs of the royal family.
[3] Literally, after having been spoken to by the worker in metal.

17 objects and I squandered them." When the Nomarch and the Controller had the worker in metal brought before them at the

PAGE V

1 sepulchres, he was blindfolded as a man to be carefully watched; his sight was restored when he arrived at the spot, and the Magistrates

2 said to him: "Walk before us to the tomb of which you said: I took away some objects from it." The worker in metal walked before the Magistrates

3 to a reserve-tomb of the royal children of King USER-MA-RA SOTEP-EN-RA (RAMESES II.), the great god; nobody had been interred therein and it had been left open,

4 as well as the resting-place of the workman AMEN-EMAN, son of HUI, of the necropolis, also situated there. And he said: "These are the tombs where I have been."

5 The Magistrates submitted the worker in metal to a complete cross-examination in the interior of the Great Valley. It was

6 found that he was unacquainted with any place there, excepting the two on which he had put his hand. He pronounced an oath by the sovereign Lord, striking his nose

7 and his ears, and with both hands upon a rod said: "I do not know any place within the (funeral) abodes, with the exception of the tomb which is open and

8 the resting-place on which your hand is placed." The Magistrates examined the tombs and the great places which are the abode of

9 the perfected, where repose the royal children, the royal wives, the royal ancestors, the good fathers and mothers of the King.

10 They were found in good condition. The high Magistrates despatched the Examiners, the overseers, the workmen of the necropolis, the Chiefs

11 of the Police, the Police-officers, and all the servants of the necropolis of the West-quarter of the city, with a grand verdict (of *Not Guilty?*) as far as the city.

12 The 16th year, the 19th day of Athyr. On that day, at the time of evening, near the temple of PTAH, Lord of Thebes, arrived the royal Controller

13 NES-SU-AMEN, Scribe of the King and the Commandant PA-SAR, of the city. They met the Chief of the workmen, USER-KHOPESH, the Scribe AMEN-NEKHTU

14 and the workman AMEN-HOTEPU, of the necropolis. The Commandant of the city spoke to the men of the necropolis in the presence of the Controller of the King

15 as follows: "The statement which you have made this day is not an authentic statement. You will have to suffer for what

16 you have done." Thus he spoke to them. He pronounced an oath by the sovereign Lord, in presence of the Controller of the King, and said: "The Scribe HORA-SHERAU, son of AMEN-NEKHTU,

17 of the necropolis, from the interior of the Khena,[1] and the Scribe PAI-BESA, of the necropolis, have made me five revelations of sayings for which you are accountable, well worthy of death;

18 now I shall place a report on this subject before the King, my master, that the King's men may be sent to destroy you all." So spoke he.

19 The 16th year, the 20th day of Athyr. Copy of the writing which the Commandant of the West-quarter of the city, Chief of the Police, PA-AU-AA, of the necropolis, placed before the Nomarch,

20 relative to the words which the Commandant PA-SAR, of the city, spoke to the men of the necropolis, in presence of the Controller of the King and the Scribe PAI-NETEM, of the Overseer of the Treasury.

21 The Commandant, PA-AU-AA, of the West-quarter of the city, said: The royal Controller, NES-SU-AMEN, Scribe of the King, found himself in company with the Commandant, PA-SAR,

22 of the city. He was discoursing with the men of the necropolis, near the temple of PTAH, Lord of Thebes. And the Commandant of the city said to the men

PAGE VI

1 of the necropolis: "Why were you mirthful on my account at the door of my house? I am the Commandant who makes the reports

2 to the Prince. Come! be mirthful in the place where you dwell. When it was examined, *you* found it in good condition, the violated (tomb) of

3 RA-SEKHEM-SESHET-TAUI, son of the Sun, SEBEK-EM-SAU-EF and NUB-KHA-S, his only royal spouse. By the great Prince!" And

[1] The buildings pertaining to the residence of the King (according to M. Chabas).

4 he pronounced ten oaths by the worth of AMEN-RA, the King of the gods, the great god, whose statues were placed in his sanctuary this day.

5 Then, the workman USER-KHOPESH, who is under the authority of the chief workman, RETU-EM-MAUT, of the necropolis, spoke as follows: "All the kings and their

6 royal spouses, royal mothers and royal children, who repose in the august necropolis, as well as those who repose in the abode of the perfected, are in good condition;

7 they are protected and cared for through all eternity; the excellent administration of the King, their child, watches and inspects them

8 thoroughly." The Commandant of the city said to him: "You use marvellous language." But the words were not insignificant ones, those spoken by the

9 Commandant of the city. Again the Commandant of the city told the words for a second time, saying: "The Scribe HORA-SHERAU, son of AMEN-NEKHTU, of the necropolis, of the interior of

10 The Khena (came . . .) towards the place where I was, and made me three revelations of very important sayings,

11 which my Scribe and the Scribe of the two districts of the city wrote down. Now the Scribe PAI-BESA, of the necropolis, made me

12 two other revelations, total, five. They also wrote them down. Concerning them silence cannot be kept; Woe! They are crimes worthy of the hatchet,

13 (and that the criminals) be placed on the bed of torture and submitted to all sorts of chastisement on account of them. But I shall send a report on this subject before the King, my master,

14 that the King's men may be despatched to destroy you." Thus spoke to them the Commandant of the city, and he pronounced ten oaths, saying:

15 "Thus shall I do." I heard of the words which the Commandant of the city said to the men of the august necropolis of millions of years, of the

16 King, in the West of Thebes, and I make a report of them before my master, as it would be a crime for a man like me

17 to hear of words and conceal them. However, I have not been able to get at the highly important words of which *thus* said the Commandant of the

18 city: "The Scribes of the interior of the necropolis, who

stayed amongst the men (of the necropolis) told them to me." Alas! I
19 did not reach them.[1] I make a report before my master on the subject. Let my master bring forward those who got at the words of which
20 the Commandant of the city said: "The Scribes of the necropolis told them to me; I will send a message on the subject before the King." Thus spoke he. It is a crime
21 for the two Scribes of the necropolis to have sought out the Commandant of the city, in order to make a report to him, when their fathers had not made him any,
22 but brought in their statement to the Nomarch, when he was in the South. But when he was in the North, the Police-officers, attendants of
23 his Majesty, of the necropolis, started for the place where the Nomarch was, with their memoranda. I have procured evidence in the 16th year, the 20th day of Athyr,
24 concerning the words which had been heard from (the mouth of) the Commandant of the city. I place them in writing before my master, that may have brought forward those who reached them, immediately the next morning.

PAGE VII

1 The 16th year, the 21st day of Athyr. On that day, at the great assembly of the city, near the two tablets of AMEN, at the entrance of the court of AMEN, at the door of the adoration
2 of the Rekhi;[2] Magistrates who were sitting in the great assembly of the city on this day:
3 The Nomarch KHA-EM-UAS, the First Prophet of AMEN-RA, King of the gods, AMEN-HOTEP, the Prophet of AMEN-RA King of the gods, the Scribe NAS-SU-AMEN, of the temple of millions of years,
4 Of the King of Upper and Lower Egypt, NEFER-KA-AR SOTEP-EN-RA (RAMESES IX.), the royal Controller NAS-SU-AMEN, Scribe of the King, the Major-domo of the abode of the divine adorer of AMEN-RA, the King of the gods,
5 the royal Controller NEFER-KA-RA-EM-PA-AMEN, Reporter of the King, the Captain Hora, of (the cavalry), the Fan-bearer HORA,

[1] Literally, my feet did not reach them.
[2] The intellectual part of society.

6 of the Marine, the Commandant PA-SAR, of the city. Then the Nomarch KHA-EM-UAS had brought forward the worker in metal PAI-KARI, son of KHARUI,

7 the worker in metal TARI, son of KHA-EM-APT, the worker in metal PA-KAMEN, son of TARI, of the temple of USER-MA-RA MERI-AMEN (RAMESES III.) which is under the authority of the First Prophet of AMEN.

8 The Nomarch said to the high Magistrates of the grand assembly of the city: "The Commandant of the city said some words to the

9 Examiners and workmen of the necropolis, in the 16th year, the 19th day of Athyr, in presence of the royal Controller NES-SU-AMEN, Scribe of the King,

10 and slandered concerning the great places which are in the abode of the perfected. Now I, the Nomarch of the country, was there

11 with the royal Controller NES-SU-AMEN, Scribe of the King. We examined the places of which the Commandant of the city said: 'They have been penetrated by the workers in metal

12 of the temple of RA-USER-MA MERI-AMEN.' We found them intact, discovering everything he had said to be false. But behold!

13 the workers in metal are standing before you. Let them tell all that has happened." They deliberated. It was found that the men

14 did not know any place in the abode of the perfected, about which the Commandant of the city had spoken. It was he who had been false in this.

15 The high Magistrates accorded the breath of life to the workers in metal, of the temple of USER-MA-RA MERI-AMEN, in PA-AMEN, which (temple) is under the authority of the First Prophet of AMEN-RA, the King of the gods,

16 AMEN-HOTEP. On this day a paper was signed for them, and they went to the house of the Scribe of the Nomarch.

SECTION 2. BABYLONIAN

NO. 1. THE DEFENSE OF A MAGISTRATE FALSELY ACCUSED[1]

This tablet, marked K 31, is preserved in the British Museum, and has been published in the "Inscriptions of Western Asia," Vol. IV., plate 53. It is very different both in style and subject from anything that has been hitherto translated. It is a letter to the King from a magistrate named Nebo-balatzu-ikbi protesting his entire innocence of the charges brought against him. He seems in great trouble, the letter passes from one subject to another almost without warning; the diction is rapid and passionate, and there can be no doubt, I think, that we have here the original letter and not a copy made from it afterwards.

The chief charges against him appear to have been two. First, disloyalty to the King (perhaps treason); and secondly, complicity in the carrying off a young lady of noble birth; which crime he utterly denies all knowledge of, and professes his readiness, if the King is not satisfied, to submit to any judicial investigation that the King may desire.

This translation, together with its accompanying text, was first published in the "Transactions of the Society of Biblical Archæology," Vol. VI., p. 289. [The translator gives no date for this inscription.]

1 To the King my Lord
2 thy servant NEBO-BALATZU-IKBI (sends greeting).
3 May NEBO and MARDUK to the King my Lord be propitious!
4 and may the god . . . who is the head of heaven and earth
5 prolong thy life! Have I not once and twice
6 besought the King my Lord? yet no one has sent to me
7 news from Babylonia.[2] Is the countenance of the King turned away from me?
8 and have I committed some crime against the King my Lord.
9 No! I have not committed any crime against the King my Lord.
10 When trustworthy witnesses had assembled together,
11 and I had declared my fidelity to the King before a Public Notary,
12 a certain man, my accuser, entered the Palace
13 boldly; a criminal charge against me he raised; fetters
14 on my hands he placed, and said:
15 In the presence of all these people who are here assembled,
16 as prisoner of my lord the King, I arrest you![3] All that day

[1] [Translated by the late H. FOX TALBOT, F.R.S. Reprinted, by permission, from "Records of the Past," Vol. xi, p. 99 *seq.*, Samuel Bagster and Sons, London.]

[2] It is very uncertain whether Babylonia be intended here, but rather Akkad, a district of Babylonia of which the exact limits are not known. It was so called from its inhabitants, the Akkadai or "Highlanders."

[3] This is a very interesting account of the arrest of an accused, and of the subsequent severe treatment under confinement of which he complains. The irregular manner in which justice was administered in ancient times,

17 I lay flat on my face upon my bed.
18 The soldiers who passed by my bed
19 out of ill-will no one gave me food for my mouth;
20 hunger and emptiness fell upon me.
21 When evening came, I rose up, and I muffled my fetters,
22 and I passed by in front of the guard
23 whom the King my Lord had set in that place to guard it.
24 How I was liberated I will now tell the King.
25 Some soldiers, strangers to me, came in thither,
26 who broke off from me the King's fetters,
27 and with idle words against the King
28 spoke (the King will understand me)
29 For two days, for money, to sustain my life
30 they brought me of their food, for my portion, and for my nourishment,
31 and they spoke words of disrespect
32 against the King my Lord, that are not decorous that the King my Lord should know them;
33 Their full speech I conceal, for it were not meet for the eyes of the King.
34 (SARLUDARU will tell me the will of the King).[1]
35 Moreover, a certain villain of the land of Sumir,[2] who never
36 broke my bread,[3] this man seduced the daughter of BABILAI,[4]
37 who is the son of one of the Priests of the Sun.
38 To the King my Lord I wrote word of the crime, and, one at a time,

as now, in the East, may be seen by comparing this account with that given by another tablet (a translation of which will be found in "Records of the Past," Vol. XI, "Assyrian Report Tablets," p. 76), in which three men, two of them holding posts which were considered to be of great importance, kept back four out of seven talents of the gold which was to have been used for the images of some former kings, and an image of the mother of the then reigning monarch. No punishment is mentioned, the writer only asking the king to command that the gold should be returned as pay to the army.

[1] That is, if the king wish to know what those words of disrespect were, would he communicate with me through Sarludaru.

[2] Rather "Akkad."

[3] *I. e.*, was my guest or friend.

[4] *Babilai*, "the Babylonian." Many names of this kind occur in the inscriptions, such as: *Assurai*, "the Assurite;" *Ninai*, "the Ninevite;" *Arba'ilai*, "he of Arbela;" *Khaltsuai*, "the inhabitant of the fortress." These names do not seem to have been used because the writers did not know the real names of the persons spoken of, as there is a number of them in a list of proper names printed in the second volume of the "Cuneiform Inscriptions of Western Asia." They seem to have been given by parents to their children from motives of civic pride, for we find such names as: *Mannu-ki-Arba'ili*, "What is like *Arbela?*" *Mannu-ki-Nina*, "What is like Nineveh?"

39 the *Sukkal*[1] and the *Martinu*[2] took it by turns to adjudicate,
40 for the King on purpose had mingled them so, to judge my household:
41 they sent writings in multitudes, letter after letter.
42 When SARLUDARU to the office of High Treasurer
43 had been appointed, the *Martinu* demanded judgment,
44 and having thrown the men of my household into prison
45 he gave them to SARLUDARU. When he came
46 to judge, he said: Fear not, my man!
47 In vain thou fearest. And I till the time of the evening meal
48 continued talking with him. Meanwhile, the girl
49 had been carried off; but how she left the house
50 I saw not; I heard not; and I knew not who
51 carried her off, not in the least! for in the crowd of servants
52 of the King my Lord, with whom she had been talking, she had remained behind.
53 O MARDUK! whoever has concealed her flight, I have as yet obtained no news of him,
54 but, O Lord of Kings! I will urge with haste the search for her present dwelling-place.
55 The *Martinu*[3] has annulled the criminal accusation
56 but that the King (himself) should judge all my family
57 from my heart I desire!

NO. 2. A BABYLONIAN LAWSUIT[4]

Having worked for more than five-and-twenty years at the Babylonian and Assyrian deeds of contract and legal decisions, and having explained the documents relating to these subjects which have been discovered in Mesopotamia, I am now able to state that the meaning of these difficult texts is at length fairly well understood by us. The simplest explanation is that which is the most difficult to obtain, and I have no doubt that the translations and interpretations I offer will appear to many scholars so easy and conclusive as to make them assume that any one might have discovered them at the outset. Fortunately, however, not only the translations of other scholars, but my own imperfect ones as well, have been published, and will thus convince younger students of the immense difficulty there is in arriving at results which seem so evident.

The first texts which I have selected contain certain contracts and legal decisions relating indubitably to captive Jews who had been carried to Babylon after the destruction of Jerusalem. One of the most interesting of them is a lawsuit commenced by a Jewish slave named Barachiel in order to recover his original status. A copy of the text has been published by Father Strassmaier in the "Transactions of the Oriental Congress," at Leyden, No. 42.

[1] Or, expert. [2] Or, law-officer. [3] Or, law-officer.

[4] [Translated by J. OPPERT. Reprinted, by permission, from "Ancient Records of the Past," N. S. (Vol. i, p. 154 *seq.*), published by Samuel Bagster and Sons, London.]

My translation of it, which will appear in the "Transactions of the Oriental Congress" at Vienna, has been amended in one or two points. The translations offered by Dr. V. Revillout and a young Assyriologist, Dr. Peiser, are very imperfect, Dr. Revillout having entirely misunderstood the nature of the suit referred to, and having fallen into several grammatical errors, while Dr. Peiser's rendering is not less unacceptable.

The case was as follows:—Barachiel, who bears the same name as the father of Elihu in the Book of Job (xxxii. 2, 6), had been the property of a wealthy person named Akhi-nuri, who had sold him to a widow of the name of Gagâ, about 570 B.C. He remained in the house of this lady as a slave, with the power of liberating himself by paying a sum equal to his *peculium*, or private property which he had been allowed to acquire, like a slave in ancient Rome; but it seems that he was never fortunate enough to be able to afford the sum of money required. He remained with Gagâ twenty-one years, and was considered the *res* or property of the house, and as such was handed over in pledge, was restored, and finally became the dowry of Nubtâ ("Bee"), the daughter of Gagâ. Nubtâ gave him to her son and husband in exchange for a house and some slaves. After the death of the two ladies he was sold to the wealthy publican Itti-Marduk-baladh, from whose house he escaped twice. Taken the second time, he instituted an action in order that he might be recognized as a free-born citizen, of the family of Bel-rimanni; and to prove that he was of noble origin he pretended that he had performed the matrimonial solemnities at the marriage of his master's daughter Qudasu with a certain Samas-mudammiq. Such a performance, doubtless, implied that the officiating priest was of free birth, and that no slave or freedman was qualified to take part in it. He declared, "I am a *mar-banî*," or "descendant of a *banû*," literally a "generator," or "ancestor," one of those semi-mythical heroes who gave their names to the noble families of Babylon. "I belong," he went on to say, "to the family of Bel-rimanni," who in other texts is called a high-priest. The case was brought before a court of justice, and the royal judges asked Barachiel to prove that he was of free birth. This *actio præjudicialis de ingenuitate* was urged for and against, and eventually Barachiel was obliged to retract his former statements. He was unable to rebut the evidence alleged against him, and though it is probable that the two married persons whose "hands he had joined" were dead, other witnesses came forward who proved that he was a slave with the power of purchasing his freedom.

The exact date at which the judgment was delivered is not quite certain, but it must be later than the seventh year of Nabonidus, when the father Itti-Marduk-baladh was still alive.

I will now proceed to make some further remarks on the details of the case, as it is very interesting, and offers some useful hints as to the legal procedure of the Babylonians.

The name of Bariki-ili or Barachiel is evidently that of a Jew. He is called "a slave of ransom," that is to say, not a slave who has already purchased his freedom, since in that case he would have been free, but a slave who was allowed by special laws to employ his private fortune in the work of liberating himself. He professes to have been the *avil taslisu* or "joiner" of the hands of bride and bridegroom at a wedding which must have taken place before the thirty-fifth year of Nebuchadnezzar's reign, when he still belonged to the house of Akhi-nuri, "the seller of the slave," as he is called at the end of the text.

After the declaration of the slave, the document is comparatively easy to understand. The judges, after perusing all the evidence, do not find any proofs that Barachiel was a man of free birth, and accordingly say to him: "Prove to us that you are the descendant of a (noble) ancestor." Thereupon Barachiel confesses that he is not free-born, but has twice run away from the house of his master; as, however, the act was seen by many people he was afraid, and said, "I am the son of a (noble) ancestor." "But I am not free-born," he continues, and then gives an account of the events of his life.

The words *mar-banut* in line 16 signify "condition of being a free-born

citizen," and not "letter of clientship," as Dr. Peiser supposes. The expression "letter of citizenship" (*dippi mar-banut*) occurs several times, and signifies the warrant given by a master to his emancipated slave. "Non-citizenship" was the fourth fact guaranteed by the seller of a slave to the purchaser, the other three being: (1) that the slave should not rebel or run away; if he returned to his former master he was to be sent back; (2) that no claim should lie against the validity of the sale on account of technical or other errors; and (3) that the purchaser should be secured against any claim made upon the services of a slave by a royal officer.

Barachiel adds that after the death of the two ladies Gagâ and Nubtâ, he was sold for money to Itti-Marduk-baladh, of the Egibi family, thus becoming a *servus redimendus argento*, a slave who could be ransomed with money, and that he awaits the sentence of the court.

The judges decided that Barachiel should be restored to his original status, and added that it was in the *uzuz* (or *usuz*) of the two married persons Samas-mudammiq and Qudasu that the judgment was pronounced. This may signify "absence," the two having died during the interval of more than twenty years which had elapsed since the marriage. It is probable that Barachiel had invented the story of his taking part in the wedding because he thought that its falsity could not be detected. If, however, the word is equivalent to the expression *ina du-zu*, the texts from Sippara would go to show that it must mean "in the presence of."

It may be remarked that not a word is said about "a deed of slavery," which was certainly not given to a slave in order to prove his own servile condition as a *vindex libertatis*, as Dr. Revillout seems to imagine.

The only penalty imposed upon the slave is his restoration to his ancient condition; penalties were decreed against those who wished to annul a contract, not against those who pretended to be free citizens. In this respect the Babylonian law was more humane than the Roman. This is the more surprising, since it cannot be denied that severe penalties were at times inflicted. The Micheaux-stones, for example, inscribed in the twelfth century before our era, threaten the transgressors of a contract and those who annul their covenants with the curses of the gods, each of whom would inflict a special punishment. The old Jew escaped with the failure of his attempt to recover his undeserved loss of liberty; perhaps the court took into serious consideration his fidelity to his former master, who had esteemed him to be worth not only a house but other slaves as well.

1. Barachiel is a slave of ransom[1] belonging to Gagâ the daughter of
2. . . . whom in the 35th year of Nebuchadnezzar, king of BABYLON,[2]
3. [from Akhi-]nuri, the son of Nabu-nadin-akh, for the third of a mina and 8 shekels
4. she had bought. Recently[3] he has instituted an action, saying thus: I am the son of a (noble) ancestor, of the family[4] of Bel-rimanni,
5. who have joined the hands (in matrimony) of Samas-mudammiq the son of Nabu-nadin-akh

[1] For the meaning of this expression see above.
[2] B.C. 570.
[3] *Ana eninni*, not a proper name as Dr. Revillout supposes!
[4] Read *lu zir*. Several distinguished persons were called Bel-rimanni, among others a priest of the Sun-god.

6. and the woman Qudasu the daughter of Akhi-nuri, even I. In the presence of
7. the high-priest,[1] the nobles and the judges of Nabonidus king of BABYLON
8. they pleaded the case and listened to their arguments in regard to the obligation of servitude
9. of Barachiel. From the 35th year of Nebuchadnezzar king of BABYLON
10. to the 7th year of Nabonidus king of BABYLON,[2] he had been sold for money, had been put
11. in pledge, (and) as the dowry of Nubtâ the daughter
12. of Gagâ had been given. Afterwards Nubtâ had alienated him by a sealed contract;[3]
13. in exchange for a house and slaves to Zamama-nadin
14. her son and Idinâ her husband had given him. They read (the evidence) and
15. said thus to Barachiel: Thou hast brought an action and said: The son of a (noble) ancestor
16. am I. Prove to us thy (noble) ancestry. Barachiel his former statement
17. retracted, saying: Twice have I run away from the house of my master, but many people (were present),
18. and I was seen. I was afraid and said (accordingly) that I am the son of a (noble) ancestor.
19. My citizenship exists not; I am the slave of ransom of Gagâ.
20. Nubtâ her daughter received me as (her) dowry; Nubtâ
21. alienated me by a sealed contract, and to Zamama-nadin her son and Idinâ her husband
22. gave me in exchange; and after the death of Gagâ (and) Nubtâ,
23. to Itti-Marduk-baladh the son of Nabu-akhe-iddin of the family of Egibi, for silver
24. I [was sold]. I am a slave. Go now, [pronounce sentence] about me.
25. [The high-priest], the nobles and the judges heard the evidence
26. [and] restored [Barachiel] to his condition as slave of ransom, notwithstanding the absence of Samas-mudammiq
27. [the son of Nabu-nadin-akh] and Qudasu the daughter of Akhi-nuri, the seller

[1] *Sangu.* [2] B.C. 549.
[3] The text does not seem to me to have been correctly copied here.

28. [of the slave]. For the registration of this [decision] Musezib the [priest]
29. [and] . . . Nergal-akhe-iddin the judges
30. . . . of the family of Epis-el, in the city of the palace of the king of BABYLON, the 17th day of
31. the month Marchesvan [1] [the 7th? year] of Nabonidus king of BABYLON.

SECTION 3. GRECIAN

THE ORATION AGAINST ARISTOCRATES[2]

The Argument

Aristocrates was the mover of a decree which the Athenians passed in favour of Charidemus of Oreus, B.C. 352. The exact terms of the decree have not come down to us. Its professed objects were, to reward Charidemus for his past services to Athens, and at the same time to attach him more firmly to her interests and secure his assistance for the future. It therefore contained (among other clauses) one making his person inviolable, and declaring, "that whosoever killed him might lawfully be arrested in any place within the limits of the Athenian confederacy, and that any state or individual refusing to give up such person, or attempting to rescue him, should be excluded from all the benefit of Athenian connexion."

For this decree, as being impolitic and injurious to his country, as well as contrary to the letter and spirit of her laws, Aristocrates was indicted by one Euthycles, for whom Demosthenes composed the present speech, which was spoken on the trial. We have no further knowledge of either the prosecutor or the defendant than what we obtain from the oration of Demosthenes. They were perhaps obscure persons put forward by the different political parties, one by the supporters of Charidemus, the other by his adversaries. It appears, however that Euthycles had been employed on some naval command in the Hellespont, and he may therefore have been conversant with Thracian politics.

* * * * * * *

Let none of you, O Athenians, imagine that I am here from motives of personal enmity to accuse the defendant Aristocrates, or that upon the discovery of some small and trifling error I am rushing eagerly into a quarrel. Unless I am mistaken in my views and calculations, I am exerting myself for no other object than that you may hold the Chersonese in safety, and may not again by trickery be deprived of it. If you wish therefore to understand these matters correctly, and to give a just and legal decision upon the indictment, you should not only attend to the words of the decree, but consider their probable consequences. Could you have seen through the artifice upon the first hearing,

[1] October.

[2] [From "The Orations of Demosthenes," translated with notes by CHARLES RANN KENNEDY, 5 vols. (vol. III), London, Geo. Bell & Sons. Demosthenes was born about 385 B.C. and died 322 B.C.]

you would perhaps not have been deceived at all: but as this is one of the frauds practised by certain people, to move and frame decrees in such a way that you may suspect nothing and be thrown off your guard, you must not be greatly surprised, if we can show this decree to be so framed, that, while it appears to give a personal protection to Charidemus, it deprives the commonwealth of her really sure and effectual means of protecting the Chersonese. You ought indeed, O Athenians, to give me your attention, and to hear what I say with favour. For when, without being one of your eternal speakers or one of the politicians in whom you have confidence, I tell you that I can prove such a dangerous thing to have been attempted; if you will support me to the utmost of your power and lend me a willing ear, you will not only secure yourselves against this danger, but encourage any of us who believe we can render service to the state. We shall believe so, if we see it is not difficult to obtain an audience with you. Many now being afraid of this, not clever speakers perhaps, but better men than those who are, it never enters their heads to consider any public question. I myself — by all the Gods, I assure you — should have shrunk from preferring this indictment, only I thought it would be highly disgraceful to keep quiet and hold my tongue now, when I see people contriving a measure injurious to Athens — I that formerly, when I sailed as commander to the Hellespont, spoke out and accused certain persons whom I believed to have done you wrong.

I am aware that some people consider Charidemus to be a benefactor of the republic. I think however that, if I can give the explanations which I propose, and tell you what I know him to have done, I shall prove not only that he is no benefactor, but that he is the most malignant enemy, and has got a very different character from what he deserves. If this, men of Athens, had been the gravest offence of Aristocrates, to have made provision by decree for such a person as I will prove Charidemus to be, giving him special and extra-legal retribution for any injury that he may suffer, I should have addressed you upon that point immediately, to convince you that he is far from deserving to obtain such a decree. There is however a still greater injustice effected by the decree, which you should first be informed of and on your guard against.

I must first of all state and explain, what it is that has enabled you to hold the Chersonese securely: by such information you will also clearly see the wrong which has been done. The cause, men

of Athens, is this — that upon the death of Cotys three princes instead of one succeeded to the kingdom of Thrace, namely, Berisades, Amadocus, and Cersobleptes: consequently they have been rivals to each other, but have caressed and courted you. Certain people, O Athenians, wishing to put an end to this, to destroy the other princes, and to put the whole monarchy into the hands of Cersobleptes, contrive to obtain this resolution of Council; by the terms of which indeed they were far from appearing to have any such design, though in fact they were using all their efforts to forward it, as I shall prove. For when Berisades, one of the princes, died, and Cersobleptes, violating his oaths and the treaty which he made with you, levied war upon Amadocus and the sons of Berisades, it was evident that Athenodorus would assist the sons of Berisades, and that Simon and Bianor would assist Amadocus: for the former is connected by marriage with Berisades, as the latter are with Amadocus. They looked therefore for the best means of compelling those generals to keep quiet, of isolating the rival princes, and thus enabling Charidemus, who was striving to win the monarchy for Cersobleptes, to get everything firmly into his power. The best way was, first for your decree to be obtained, making any one who killed him liable to arrest; secondly, for Charidemus to be elected general by you. For Simon and Bianor, who had been made citizens, and who, independently of that, were devoted to you, would not be in a hurry to take the field against your general; and Athenodorus, who was a citizen by birth, would never think of such a thing, and never expose himself to a charge under the decree, which would be sure to be advanced against them, if anything happened to Charidemus. By such means, the princes being destitute of support, and impunity being secured for themselves, they hoped easily to expel them and get possession of the kingdom.

That such was their expectation and such their contrivance, the facts are sufficient to prove. For at the very time when they were themselves commencing war, there came as ambassador from them to you this Aristomachus of Alopece, who in his address to the assembly, besides praising Cersobleptes and Charidemus in general terms, and declaring how friendly their feelings were to you, said that Charidemus was the only person able to recover Amphipolis for the commonwealth, and advised you to elect him general. This resolution of Council had already been concerted and prepared by them, so that, in case you should be prevailed upon through the hopes and promises which Aristomachus held

out, the assembly might immediately ratify it, and nothing should stand in the way. Let me ask; how could any people have more artfully or cunningly devised a plot for the expulsion of the rival princes and the subjugation of the whole empire under one whose cause they espoused, than by so contriving matters, that the persons who would be likely to assist the two should be intimidated and shrink from the vexatious proceedings which they must expect to be taken against them by virtue of this decree, while he that was trying to get the kingdom for one and working for everything opposed to your interests had an ample licence given him to effect his purposes securely? And not only from this is it evident that the resolution of Council was moved for the reasons which I state, but the decree itself affords a pretty strong piece of evidence. After the words "if any one shall kill Charidemus," omitting to state what Charidemus must be doing at the time, whether acting for your advantage or otherwise, he has immediately added, "that he may be apprehended in the territory of your allies." Now no man who is alike our enemy and his, will ever come to our allies, whether he has killed Charidemus or not; so that this penal clause has not been framed against such a party. One that feared the decree, and was careful not to incur our certain enmity, would be a person friendly to us and opposed to him in the event of his attempting anything against us. Such persons are Athenodorus, Simon, Bianor, the Thracian princes, all who would wish to oblige you by checking Charidemus in any hostile attempt.

The object then for which the resolution of Council was moved, that the people under delusion might confirm it, and the reason why we have preferred this indictment, wishing to prevent such a result, I have told you, men of Athens. Perhaps, as I have undertaken to prove three things, first, that the decree has been moved in violation of the laws, secondly, that it is disadvantageous to the commonwealth, thirdly, that the party for whom it has been drawn is unworthy to obtain such honours, it is right that I should give to you my hearers the option, what you would like to hear first, what second, and what last. Consider then which you would like, that I may begin with that. Do you wish me to begin with the breach of law?[1] Then to that I will address myself. But I have one thing to request, to entreat of you all — and it is reasonable, I am sure — Don't let any of you, men of Athens, out of a jealous feeling because he has been deceived in Charidemus and thinks him a benefactor, listen with less favour to my discourse about the

[1] Here we are to suppose the jury gave token of assent.

laws: don't let him on that account deprive himself of the power to vote conscientiously, or me of the right to open my whole case to you as I please: but let him give me his attention thus — and see how fairly I will put it. When I am speaking about the laws, irrespective of the person in whose favour the decree has been moved and of his character, look whether it has been moved contrary to the laws or in accordance with them, and look at nothing else. When I bring his deeds home to him, and explain the manner in which he has deceived you, look at the facts, whether I state them truly or falsely. When I discuss whether or no it is expedient for the commonwealth to pass this decree, lay aside everything else, and consider whether my reasoning upon the question is sound or unsound. If you listen to me in this temper of mind, you will yourselves more fully comprehend what is necessary, looking at each point singly, and not trying a heap of questions at once; and I shall be able to explain what I want more easily. Upon every point I shall be brief.

Now take and read the laws themselves, that out of their very language I may show the illegality which has been committed.

One of the Laws of Homicide from the Areopagus:

"The Council of Areopagus shall have cognizance of murder, and wounding with malicious intent, and arson, and poisoning, if any one shall kill another by giving poison."

Stop. You have heard both the law and the decree,[1] men of Athens. I will tell you how, as it appears to me, you will most easily comprehend the arguments on the point of illegality. You must look what is the position of the man, in whose favour the decree has been moved; whether he is an alien, or a resident alien, or a citizen. If we call him a resident alien, we shall not be speaking the truth; if an alien, we shall not be acting justly; for the people's grant, by which he has become a citizen, ought to stand good. We must treat him therefore in argument, it seems, as a citizen. And only see how fairly and equitably I will deal with the question: for, while I rank him in that class in which he will obtain the highest honour, I don't consider that privileges, which even we native citizens do not enjoy, ought in contempt of the laws to be accorded to him. What privileges do I mean? Those which the defendant has inserted in his decree. It is written in

[1] The decree of Aristocrates, set forth in the indictment, which was read by a clerk of the court to the jury at the commencement of the trial.

the law, that the Council shall have cognizance of murder, and wounding with malicious intent, and arson, and poisoning, if any one shall kill another by giving poison. And the legislator having premised, "if any one shall kill," has nevertheless ordered a trial, before saying how the author of the deed is to be punished; herein, men of Athens, exercising a wise forethought for the religion of the whole state. How so? It is impossible for all of us to know who the murderer is. To believe therefore any such charges without trial, he thought would be monstrous; and he considered that, since it is we who will have to avenge the sufferer, we must be satisfied and convinced by proof that the accused party is guilty; for then is it righteous to punish, when we are acquainted with the facts, and not before. Moreover he reckoned that all such expressions as "if one shall kill," "if one shall commit sacrilege," "if one shall commit treason," and the like, before trial are terms of accusation only, after trial and conviction they become crimes. With a term of accusation he thought it proper to associate not punishment, but trial. And therefore he enacted that, if any man shall kill another, the Council shall have cognizance, and did not state what he is to suffer upon conviction. Thus did the legislator express himself: how did the author of the decree? "If any one shall kill Charidemus," he says — the misfortune he has described in the same terms as the legislator, "if any one shall kill" — but he does not go on in the same manner: he has done away with all judicial hearing, and made the party liable to immediate arrest; in contempt of the tribunal appointed by law, he has given over without trial to his accusers, to be dealt with according to their pleasure, a person whose guilt is not yet clear. And when they have taken him, it will be lawful for them to torture or to beat or to exact money from him. But all these things are by the law underneath [1] positively and plainly forbidden to be done even to convicted and declared murderers. Read them the words of the following law: —

The Law

"And it shall be lawful to kill [2] murderers in our own territory or to take them into custody, as the lawgiver directs in the tablet,[3]

[1] The law written under the one last cited on the board exhibited to the jury.

[2] That is, "they might be killed, if they resisted lawful capture;" as Heraldus explains it.

[3] The laws of Solon were originally inscribed on wooden tablets of a pyramidal shape, made to turn on an axis. They were at first kept in the Acropolis, but afterwards brought down to the Prytaneum.

but not to ill-treat nor to amerce them, under pain of having to pay double damages. And the Archons shall bring to trial such causes as they have cognizance of respectively for any one that desires it: and the court of Heliæa shall decide."

You have heard the law, men of Athens. Look and observe, how wisely, how piously the legislator has drawn it. Murderers, he says. In the first place, by a murderer he means one who has been found guilty by verdict: for no one falls under that designation, before he has been convicted and found guilty. Where does he show this? Both in the former law and in the present. In the former, after the clause "if any one shall kill," he added "the Council shall have cognizance:" in this, after naming the murderer, he has declared what he ought to suffer. Where the thing was accusation only, he has directed the trial; but where the term has become properly applicable to a convict, he has ordained the punishment. He must therefore be speaking of convicted parties. And what says he? That it shall be lawful to kill or to take into custody. Does it mean, to the captor's own house, or as he pleases? No such thing. How then? As is directed in the tablet, he says. And what is that? What you all know. The Judges have authority to punish with death those who are in exile for murder; and you all saw the person in the assembly last year carried off by them to prison. It is to them therefore that he orders the party to be taken. And how does this differ from taking him to the captor's own house? He that takes off the offender to the Judges, men of Athens, gives all power over him to the laws; he that carries him to his own house gives the power to himself. In the former case the punishment may be such as the law prescribes; in the other case, such as the captor pleases: and surely it makes a vast difference, whether the law has authority to inflict punishment, or whether an enemy has. "But not to ill-treat nor to amerce," it says. What mean those expressions? By not ill-treating, a term undoubtedly familiar to all, he means not to scourge, not to shackle, not to do anything of that sort: and by not amercing, not to exact pecuniary penalties; for the ancients called a pecuniary penalty an amercement. Thus has the law defined how a murderer and a convict must be punished, and where, naming the country of the sufferer; and has positively declared that it shall be in no other manner but that, and nowhere else but there. The author of the decree however is far from having defined it thus: in fact he has said quite the contrary; for after writing "if any one shall kill Charidemus," "it shall be lawful," he adds,

"to apprehend him in any place." What mean you? When the laws do not permit even convicts to be taken into custody except in our own territory, do you allow a man without trial to be apprehended in all the domain of our confederacy? And when the laws do not sanction the arrest even in our own territory, do you authorize it to be effected everywhere? Moreover, in making the offender liable to be arrested, you have allowed everything which the law has forbidden; to extort money, to ill-treat and torment him in his lifetime, to keep him in private custody and put him to death. Could any conviction for an illegal motion be clearer than this? Could there be a conviction for a more shameful decree? For, when there were two expressions open to your choice, one applicable to parties accused, "if any one shall kill," another to convicted parties, "if any one shall be a murderer," in your description you adopted the term for a person under accusation, but you pronounce against untried parties a sentence which the laws do not pass even upon the condemned; and the intermediate proceedings you suppressed: for between accusation and conviction is trial, which the defendant has nowhere introduced in his decree.

Read the laws following: —

The Law

"And if any one shall kill a murderer or be the cause of his death, whilst he keeps away from the border-market [1] and from the games and Amphictyonic sacrifices, such person shall be liable to the same penalties as if he had killed an Athenian; and the Fifty-one [2] shall decide."

You ought to be informed, O Athenians, what was the intent of him that framed the laws: and you will see how cautiously and conformably to legal principles he defined everything. If any one shall kill a murderer, (he says,) or be the cause of his death, whilst he keeps away from the border-market and from the games and Amphictyonic sacrifices, such person shall be liable to the same penalties as if he had killed an Athenian; and the Fifty-one shall decide. What does all this mean? He considered that, if a man who has fled from his country on a charge of murder and been condemned has once escaped and saved himself, though he ought to be expelled from the native land of his victim, it is not righteous

[1] This, as the orator himself shows, was a place on the confines of two neighbouring states, where the borderers met for the purpose of traffic.
[2] The Ephetæ.

to kill him in every place. What was the legislator's view? That, if we slay people who have fled to other countries, others will slay those who have fled to Athens. And should this be the case, the only refuge that is left for the unfortunate will be abolished. What is this? The power of removing from the land of the murdered to a land where none have been injured, and there dwelling in security. To prevent what I say, and in order that the avenging of misfortunes may not be endless, he wrote — "if any one shall kill a murderer whilst he keeps away from the border-market" — those are his words: meaning what? From the borders of the country. For there, as it appears to me, our own people and the neighbours adjoining used in ancient times to assemble; whence he has called it border-market. And again, "from the Amphictyonic sacrifices." Wherefore, I ask, did he exclude a murderer from these too? He banishes the culprit from everything in which the deceased in his lifetime had a part: first, from his country and all things in it either sacred or profane, assigning the border-market as the limit from which he declares him excluded: next, from the sacrifices of the Amphictyons; for in them, if the deceased was a Greek, he had a part. And from the games. On what account? Because the games in Greece are open to all, and by virtue of the general right the deceased had access to them also. Therefore also from them let him keep away. From all these places he banishes the murderer. But if any one shall kill him elsewhere, out of the excepted places, the legislator has given the same redress as in the event of killing an Athenian. For he did not describe the exile by the name of the state, with which he has no communion, but by that of the crime with which he has made himself chargeable; and therefore he says, "if any one shall kill a murderer." Then, after stating from what he must be excluded, in order to impose the sentence legally he mentioned the name of the state — "let him be subject to the same penalties as if he were to kill an Athenian" — speaking a different language, O Athenians, from the mover of this decree. Is it not cruel, when the law has allowed men to live safely in exile, on condition of their avoiding the places which I have mentioned, to propose that they shall be delivered up, and to rob them of that benefit of mercy which the unfortunate may fairly claim from those whom their crimes concern not; it being uncertain, in the darkness of our future destinies, for which among us all the benefit is reserved. And now, should the slayer of Charidemus (supposing such an event really to happen) be slain in return by any persons to whom he is surrendered, after he has

gone into exile and keeps aloof from the forbidden places, they will themselves be amenable to the penalties of murder, and so will you, Aristocrates: for it is written, "if any one be the cause," and you will be the cause, having given the sanction of your decree. Well then: if we let you alone in such a case, we shall be living in company with men polluted; if we take proceedings against you, we shall be forced to act contrary to our own determinations. Is it a slight or trivial ground that you have for setting aside the decree?

Now read the next law:

The Law

"If any one beyond the boundaries shall pursue or seize or carry off any homicide who has quitted the country, whose property is not forfeit, he shall incur the same penalties as if he did the like in our own territory."

Here, men of Athens, is another law humanely and wisely framed, which the defendant will be shown to have transgressed likewise. "If any one" — it says — "shall so treat any homicide who has quitted the country, whose property is not forfeit." It means one who has withdrawn on account of an involuntary homicide. By what does this appear? First, by its saying "who has quitted the country," and not "who is in exile;" secondly, by the definition, "whose property is not forfeit;" for the estate of those who commit homicide by design is confiscate. Therefore the legislator must be speaking of involuntary homicides. And what are his words? "If any one beyond the boundaries" — he says — "shall pursue or seize or carry off." And what means this expression "beyond the boundaries?" The boundary-line for all homicides is exclusion from the country of the deceased. From this he permits them to be chased and taken into custody, but beyond the limits he allows neither to be done. And if any one acts contrary to this, he has given the same redress as if he injured the party while staying at home, declaring that he shall incur the like penalty as if he did it at home. Now were Aristocrates the defendant to be asked, (and don't think it a foolish question,) first — if he knows whether any one will kill Charidemus or whether he will come to some other end — he would answer probably, that he did not know. We will assume however that some one will kill him. Again, do you know, Aristocrates, whether the person who is to do it will be a voluntary or an involuntary agent, an alien or a citizen? It is impossible for you to say that

you know. Then surely you ought to have added these particulars, saying, "if any one shall kill voluntarily or involuntarily, justly or unjustly, being a citizen or an alien;" so that, by whomsoever the deed was done, he might have had justice according to law; but decidedly not, after a mere term of accusation, to have added "let him be liable to arrest." For what boundary have you left by this clause, when the law quite plainly prohibits all pursuit beyond the boundaries, and yet you allow arrest in any place? And the law forbids not only pursuit, but even arrest, beyond the boundaries: whereas by your decree any one who pleases may get a man who has unintentionally taken life delivered into his hands, and carry him by force into the country of the deceased. Do you not confound all human judgment, and exclude the motives according to which every action is honourable or disgraceful? You see, Athenians, that so it is not merely upon questions of homicide but upon all questions: — "If a man commits an assault, being the aggressor," the law says; implying that, if he defended himself, he is not guilty. "If a man speaks abusive words" — "which are false," the lawgiver adds; as much as to say that, if they are true, it is justifiable. "If a man kills another by design;" as much as to say that, if he does so unintentionally, it is different. "If one damages another intentionally without just cause." In every case we shall find the motive determining the thing. But not so with you. You words are unqualified — "if any one shall kill Charidemus, let him be arrested" — though he may have done it unintentionally, though justly, though in self-defence, though for a cause which the law allows, though in any manner whatever.

Read the law that follows:

The Law

"And no persons shall be liable to any legal proceedings for homicide, who exhibit an information against exiles, in case any one return whither it is not lawful."

This, men of Athens, is a law of Draco; so are all the laws of homicide which I have cited; and you must look at his meaning. Those who exhibit an information against murderers returning whither it is not lawful, he says, shall not be liable to proceedings for homicide. Here he declares two principles of law, both of which the defendant has violated in his decree: first, he allows one to exhibit an information against the murderer, but not to carry him off in one's own custody; secondly, even this he only

allows when a man returns where it is not lawful, not in any place that he goes to. And where is it not lawful to go? To the city from which he is exiled. Where does he very plainly show this? "In case any one return," he says. This cannot be referred to any other than the city from which a man is exiled: for it is impossible surely to return to one from which you were never banished at all. The law therefore has allowed an information, and only in case a man returns where it is not lawful: Aristocrates has it — let him be subject to arrest even in places to which no law forbids him to flee.

Read another law:

The Law

"If one man shall kill another unintentionally in a prize-fight, or slaying him in an ambuscade or in battle by mistake, or after catching him with his wife, or with his mother, or with a sister, or with a daughter, or with a concubine whom he keeps to beget free-born children,[1] he shall not go into exile for homicide on such account."

Many laws, O Athenians, are violated by the decree, but none more completely than the law which has just been read. For although the law so plainly gives out and declares, under what circumstances it shall be lawful to kill, the defendant overlooked all this, and has inserted the penal clause without mentioning how the death is effected. Yet mark how fairly and righteously all the distinctions were drawn by their author. He laid it down, that it was no crime to kill a man in a prize-fight. Why? He looked not at the event, but at the intention of the party. And what is this? To vanquish without taking life, not to kill. If the adversary was too weak to endure the struggle for victory, he considered that he was the cause of his own misfortune, and therefore allowed him no redress. Again — "if in battle by mistake," he says — such a person also shall be deemed pure. Properly: for if I destroyed a man supposing him to be one of the enemy, I deserve, not to be brought to trial, but to obtain forgiveness. "Or catching with his wife," he says, "or with his mother, or sister, or daughter, or with a concubine whom he keeps to beget free-born children" one that kills on any of these accounts he lets off with impunity, acquitting him, O Athenians, with the most perfect justice. Wherefore so? In defence of those for whom we fight with the

[1] They would enjoy the political franchise, if their mother was an Athenian, though they might not have heritable rights.

enemy, to protect them from insult and indignity, he allows us to kill even our own people, if they insult and outrage them contrary to law. For since there is no race of friends and foes, but it is their actions that make the one and the other, the law permits us to punish as enemies those who commit acts of hostility. It is monstrous then, when there are so many causes for which it is lawful to kill other men, that Charidemus should be the only person in the world whom even for these causes it is not lawful to kill.

Suppose it should happen to Charidemus, as doubtless it has happened to others before now; that he should quit Thrace and take up his abode in some city, where, though no longer possessing that authority by which he does so many things forbidden by the laws, he will be driven to make the attempt by the force of his habits and desires: won't people be obliged to submit to his outrages in silence? At least it will not be safe to kill him, or to seek the redress which the law affords, by reason of this decree. If I am met with the objection — where can such things take place? — what prevents me also saying, who can slay Charidemus? However, don't let us look at that: but, since the decree that we are trying was passed, not on account of anything which had taken place, but to provide for something which no one is sure ever will take place, let the chance of the future be common to both; to this let us conform our expectations humanly, and look at it as if both the one contingency and the other may possibly happen. At all events, if you rescind the decree, should any disaster befal Charidemus, you have the means which the laws give to avenge him: if you let it stand, in case he should injure any one in his lifetime, the legal remedy of the oppressed is gone. In every way therefore the decree is opposed to the laws, and it is your interest to set it aside.

Read the next law:

The Law

"And if one resisting any unlawful seizure or violence shall immediately kill the aggressor, his death shall not be punishable."

Here are other causes for which it is lawful to take life. If a man resisting any unlawful seizure or violence shall immediately kill the aggressor, he orders that the death shall not be punishable. Pray observe, how wisely. By his having first mentioned the causes for which life may be taken, and then adding the "immediately," he left no time for contriving any foul play: by the word

"resisting," it is clear that he gives the power to the aggrieved party, not to any one else. The law has therefore given permission to kill immediately in self-defence; Aristocrates has it simply, "if any one shall kill," even though with justice or as the laws allow. Oh, but we are cavilling; for whom will Charidemus attack or seize unjustly? Everybody. For you are of course aware, that all military commanders lay violent hands upon those whom they think they can overpower, to make requisitions of money. Is it not shameful then — (O earth and heaven!) — is it not manifestly illegal, contrary not only to the written law, but to the common law of all mankind, that I am not at liberty to resist a person who seizes or forcibly carries off my property, treating me as an enemy? — for even in this way it will not be lawful to kill Charidemus; but, should he iniquitously seize and make booty of any man's property, the party killing him will be liable to arrest, although the law gives impunity under such circumstances.

Read the next law:

The Law

"Whatever person, whether he be a magistrate or in a private station, shall cause this statute to be defeated, or shall alter it, he shall be disfranchised, and his children likewise, and his property shall be forfeit."

You have heard the law, O Athenians, saying positively — whatever person, whether he be a magistrate or in a private station, shall cause this statute to be defeated, or shall alter it, let him be disfranchised and his children likewise, and let his property be forfeit. Does it appear to you, that the framer of the law took small or slight pains to establish its validity, and to prevent its being defeated or altered? Nevertheless Aristocrates the defendant, but little regarding him, does alter and defeat it. For what is altering but this; when a man allows punishment out of the appointed tribunals and limits of banishment, when he makes people outlaws, and does away with their right to be heard? What is defeating but this; when a man frames a complete series of clauses contrary to the enactments of the law?

And not only these laws has he violated, O Athenians, but many more, which I have not exhibited on account of the number. However I will sum it up in a few words. All the laws concerning the courts of homicide, which require the parties to be summoned or to give testimony or make oath, or which give any other direction, he has transgressed and violated by the present decree. For

where there is no summons, no trial, no testimony of a witness, no swearing of an oath, but immediately after the charge the punishment is ordered, and one too which the laws prohibit, what else can one say? All these proceedings take place before five courts, as appointed by the laws. But perhaps it may be said — the courts are of no account, and are not founded in justice, whereas the defendant's ordinances are just and honourable. Quite the contrary. I don't know that there has ever been a decree passed in Athens more shameful than the defendant's; while, of all tribunals that exist among mankind, none can be shown more august or equitable than these. I would briefly advert to certain facts, the mention of which brings honour and renown to the commonwealth, and which you will be better pleased to hear. I will begin with that which will throw the fullest light upon the subject, after referring to the grant which has been made to Charidemus.

We, men of Athens, created Charidemus a citizen, and by means of such grant we admitted him to civil and religious communion, to partake in our legal rights, in all that we ourselves enjoy. There are many institutions among us of a character not to be found elsewhere, but one there is the most peculiar of all, and the most highly venerable, the court of Areopagus, respecting which we have more glorious traditions and myths, and more honourable testimonies of our own, then we have of any other tribunal; of which it is proper you should hear one or two by way of example. In ancient times, as we are informed by tradition, the Gods in this tribunal alone deigned both to demand and to render justice for murder, and to sit in judgment upon disputes between each other; so says the legend: Neptune demanded justice of Mars on behalf of his son Halirrhothius, and the twelve Gods sat in judgment between the Furies and Orestes. Such are its ancient glories: now for those of later date.

This tribunal neither despot nor oligarchy nor democracy has ventured to deprive of its jurisdiction in murder: all people consider that any process of their own invention would be less efficacious than that devised by the Areopagites. In addition to such important facts, here only has it occurred that neither a convicted criminal nor a defeated prosecutor ever established a charge against the propriety of the verdict. In contempt of this jurisdiction and of the legal remedies attached to it, the author of the present decree has empowered Charidemus in his lifetime to do what he pleases, and, in case any disaster should befal him, has given the means of persecution to his friends.

Just consider. Of course you all know that in the Areopagus, where the law allows and requires proceedings to be taken for murder, in the first place the party who charges another with any such crime will make oath with imprecations upon himself and his family and his house; in the next place it is no ordinary oath that he has to swear, but such as is taken upon no other occasion; for he must stand upon the entrails of a boar and a ram and a bull, and they must have been immolated by the proper persons and on the appointed days, so that both in regard to the time and the officiating persons every due solemnity may have been observed. And even then the party who has sworn such an oath is not yet believed, but, in case he should be convicted of untruth, he will carry away the curse of perjury upon his children and his family, and that is all he will get by it. If his accusation be considered just, and he obtain a conviction for murder, even then he gets no power over the condemned, who for punishment is given up to the laws and to the persons charged with that office: he may behold the condemned suffering the penalty which the law imposes, but nothing further. Such is the duty assigned to the prosecutor: the accused has to take the oath in like manner, but, after he has delivered his first speech, he is at liberty to withdraw, and neither the prosecutor nor the judges nor any persons whatever have authority to prevent him. How comes it to be so, men of Athens? Because they that made the ordinances originally, whoever they were, whether Heroes or Gods, did not press upon the unfortunate, but humanely, as far as they could with propriety, alleviated their miseries. All these regulations, so fair and so equitable, the framer of the present decree is shown to have infringed; for not a single portion of them is adopted in his decree.

First therefore this one tribunal, its written laws and unwritten usages, have been violated by the decree.

A second tribunal also, the court of Palladium,[1] for the trial of involuntary homicide, he supersedes, as I shall show, and infringes the laws which are administered in it. For here the practice is,

[1] Of the origin of these four courts some account is given in Pausanias (i. 28), as well as in Harpocration and elsewhere. The first of them was held in a temple of Pallas, where, according to the story, was deposited the Palladium brought from Troy by Diomed and his followers, who, landing on the coast of Attica, were inadvertently attacked, and some of them slain, by Demophoon and the Athenians. The second was held in a temple of Apollo Delphinius, evidently on account of the protection afforded by the Delphic god to Orestes. The third was held in a room of the Prytaneum, or city-hall. The fourth was by the sea-shore in Piræus, and received its name because it was held in a pit.

first for the parties to swear, then to plead, and lastly for the court to decide: of which there is nothing in this man's decree. If the accused be convicted and found to have done the deed, neither the prosecutor nor any one else has power over him, but only the law. And what does the law command? That one convicted of involuntary homicide shall on certain stated days leave the country by an appointed road, and remain in exile until he has appeased certain of the relatives of the deceased: then it permits him to return, not anyhow, but in a particular manner, ordering him to sacrifice and to be purified, and giving some other directions what must be done. Rightly, O men of Athens, does the law prescribe all this. For it is just to make the penalty of unintentional homicide less than that of intentional; and it is right to provide security for leaving the country before banishment; and for the returning exile to make atonement and purify himself by certain ceremonies, and for everything to be under the control of the laws, this and all of it is reasonable. Yet all these arrangements, planned so wisely by the original legislators, the defendant in framing his decree disregarded.

Here then have we two tribunals of high dignity and importance, and usages handed down from time immemorial, which he has impudently overridden.

There is also a third tribunal, one of the most awful sanctity, where a man acknowledges that he killed, but contends that he has done it lawfully. This is the court of Delphinium. It appears to me, men of the jury, that they who originally settled the law upon these subjects inquired in the first instance, whether no homicide could be deemed rightful, or whether a certain kind ought to be so deemed; considering then that Orestes, acknowledging to have killed his mother, gets a tribunal of Gods to try him and is acquitted, they held that some kind of homicide was justifiable; for Gods would certainly not give a wrong verdict. Having come to that opinion, they defined in precise terms the causes for which it was lawful to kill. Aristocrates however makes no exception, but simply declares that, if any one shall kill Charidemus, (even though justly or as the laws allow,) he must be given up. Now to all actions and words there are two possible predicates, namely of just and unjust. No single action or word can have both of them at the same time; (for how could the same thing be at once just and not just?) but everything before trial is supposed to have one or the other; if it appear to have the quality of injustice, it is set down as base, if of justice, as honourable and good. You however

attached neither of those conditions to the clause "if any one shall kill;" but having expressed the charge itself indefinitely, and having added immediately after, "that he may be lawfully apprehended," you have clearly treated this third tribunal and its usages with contempt.

There is a fourth besides these, the court in the Prytaneum, whose jurisdiction is as follows. If a stone or a piece of wood or iron or anything of the kind falls and strikes a man, and we are ignorant who threw it, but know and have in our possession the instrument of death, proceedings are taken against such instruments here. If then it is not right that inanimate and senseless things, when they lie under such a charge, should be left untried, surely it is impious and dreadful, that one who is possibly innocent, but who (assuming him to be guilty) is at all events a human being and gifted by fortune with the same nature as ourselves, should upon such a charge without hearing and judgment be given up to his accusers.

There is yet a fifth tribunal, which he has failed to respect, and I beg you to observe its character. It is that in Phreatto. Here, men of Athens, the law requires a person to take his trial, who has been exiled for involuntary homicide, and, before those who caused his banishment have pardoned him, incurs the charge of wilful murder. And the framer of these several ordinances did not, because it was impossible for the criminal to come to Athens, overlook his case, nor, because he had done some such act before, did he at once take a similar charge against him for granted; but he found a means to keep religion unprofaned, and did not deprive the criminal of a hearing and trial. What did he then? He brought the judges to a spot to which the criminal might repair, appointing a certain place in Attica by the seaside, called Phreatto. The accused then sails up in a vessel and pleads, without touching the land; the judges hear and decide on shore. And if he is found guilty, he suffers the punishment of wilful murder, justly; if he is acquitted, he escapes that penalty, but undergoes the exile for his former homicide. Why, let me ask, have these arrangements been made so carefully? The contriver of them thought it was the same impiety to leave a guilty man at large, and to give up an innocent man for punishment before trial. Now, if for already declared homicides such anxiety is shown, that they may obtain a hearing and a trial and everything that is fair upon a subsequent charge, surely in the case of a man who has not been convicted, on whom no judgment has been passed, whether or no he did the

deed, whether intentionally or unintentionally, it is outrageous to frame a decree for giving him up to his accusers.

In addition to all these legal remedies, there is also a sixth, which the defendant has equally set at nought by his decree. If a man has been ignorant of all the other courses, or if the times within which they must each be pursued have gone by, or if for any reason whatever he does not choose to adopt these methods of prosecution, but sees the homicide walking about in the temples and the market, it is lawful to carry him off to prison, but not to his own house or where he pleases, as you have allowed. And when he is brought to prison, he will suffer nothing there before trial, but, if he is found guilty, he will be punished with death; if the person who arrested him fails to get a fifth part of the votes, he will be mulcted in a thousand drachms. Aristocrates orders nothing of this kind, but that the one party may accuse without risk, and the other be given up instantly without trial. And if any persons or even a whole community shall interfere, to prevent the destruction of all these usages which I have enumerated, the abolition of all these tribunals which I have spoken of, which Gods established, and to which men have been resorting ever since, and shall rescue the party thus illegally attacked and outraged, he has put in a clause to excommunicate them, nor does he allow even them a hearing or a trial, but punishes them without trial immediately. How could there be a more shameful decree than this, or a more illegal one?

Have we any law yet remaining? Show me. There is one. Recite it.

The Law

"If any one shall die a violent death, his relations shall be entitled to take hostages in that behalf, until they have either submitted to judgment for the homicide, or given up the authors of it. And the taking of hostages shall extend to three, but not beyond."

There are many good laws, O Athenians, but I don't know that any is better or juster than this. Only see how equitably, how very humanely it is drawn. "If any man shall die a violent death," it says. First then, by adding this word "violent," he has given us an indication that he means "if unjustly." The relations, he says, shall be entitled in that behalf to take hostages, until they have either submitted to judgment for the homicide or given up the authors of it. Look how fairly. First he requires them to submit to judgment; secondly, if they do not like this, he orders

them to give up the author; if they will not do either of these things, he says, the taking of hostages shall extend to three, but not beyond. Well then: every part of this law is contravened by the decree. For in the first place he writes, "if any one shall kill," but does not add "unjustly," or "violently," or anything at all. In the next place, before any demand of satisfaction, he orders that the party may be immediately apprehended. And in addition to this, while the law directs that, if the people among whom the disaster has occurred neither submit to judgment nor give up the authors of the crime, they shall be liable to have hostages taken from them to the number of three; Aristocrates lets them go unpunished, nay, he has left them out of account altogether; but those who have harboured a man already in exile, (for so I will assume,) according to the universal law which permits the receiving of an exile, he excludes from all connexion with Athens, if they will not deliver up the suppliant for punishment. Therefore, by his having no proviso as to the mode of killing, and by his not directing any trial or any demand of satisfaction, and by his allowing arrest in any place whatever, and by his punishing those that harbour and not those among whom the disaster occurred, in short by everything it is quite manifest, that here is another law violated by his decree.

Now read the next:

The Law[1]

"And it shall not be lawful to propose any statute applying to a particular man, unless the same shall apply to all Athenians."

The law which has just been read is not another of the laws of homicide, men of the jury, yet it is fully as good, if any law ever was so. For the proposer of it thought that, as other constitutional rights are equally shared by all, so ought every man to share equally in the laws; and therefore he made it unlawful to propose any statute applying to a particular man, unless the same should apply to all Athenians. Since then it is admitted that decrees ought to be framed according to the laws, a man who draws a special one in favour of Charidemus, which will not extend to all of you, clearly must have moved in contravention of this

[1] A *privilegium*, or law specially made for a particular person, was forbidden by the Twelve Tables, as Cicero tells us, "Orat. pro Domo," 17. Compare "De Legibus," iii. 4. 19; "Brutus," 23; "Orat. pro Sextio," 30. It appears from these passages that Cicero understood the word *privilegium* as used in a bad sense only, of a penal law passed against an individual, such as the bills of pains and penalties.

law. For it can never be constitutional to put that in a decree, which cannot even be the subject of a statute.

Read the next law — or are these all?

The Law

"And no decree, either of the Council or the People, shall have greater authority than a law."

Put it down. It will be short and easy work, I expect, men of the jury, to show that this law has been violated by the decree. For when there are so many laws, and when a man has prepared a motion in defiance of them all, and included a private concern in a decree, how can it be doubted that he requires a decree to have greater authority than a law?

I wish also to show you one or two of the decrees which have been drawn up for real benefactors of the commonwealth, that you may see it is easy to frame just resolutions, when the sole purpose of framing them is to honour a man and impart to him the rights that we enjoy ourselves, not under the show of doing this to practise trickery and fraud. Read these decrees. That it may not be long for you to hear, from each of the decrees is selected just that part which concerns my charge against the defendant. Read.

[*Extracts are here read from various decrees.*]

You see, men of Athens, that all have drawn them up in the same manner: (let there be the same redress for him, it says, as if the party killed an Athenian:) leaving your existing laws upon this head in force, and even setting off their dignity, since they esteemed it as a boon to allow any one to share them. Not so Aristocrates. He vilifies them as much as he possibly can; (certainly he treated them as worthless when he took pains to draw a special decree:) and even disparages the grant, by which you have bestowed citizenship upon Charidemus. For, as if you were only too happy and even owed him an obligation, he has proposed that you should guard his person, so that he may do what he likes with impunity. Is not this acting as I say?

I know, men of Athens, Aristocrates will not be able to show that he has not plainly transgressed the laws by his decree, but will endeavour to keep out of sight the most grievous of his delinquencies, namely, his not having in the whole of his decree appointed any trial of such a charge. I do not deem it necessary to

say much upon this point, but I will show clearly from the decree itself, that even he does not suppose there is any trial for the accused party. For he has it — "if any one shall kill Charidemus, he may be lawfully apprehended, and if any people shall rescue him, whether they be individuals or a community, they shall be excluded from our connexion" — not, unless they surrender for trial the party rescued, but absolutely at once. Now, if he were allowing a trial and not taking it away, he would have put in the penal clause against the rescuers, in the event only of their not producing the rescued party for trial.

I believe that he will urge this plea also, and try hard to mislead you by it — that the decree is of no effect, for it is an order of Council, and the law declares that resolutions of the Council shall be in force for a year, so that, even if you acquit him now, the state will suffer no detriment by the decree.[1] In answer to which I would have you remember — Aristocrates drew this decree, not that it might be void and thus no harm should befal you, (for he could have abstained from drawing any at all, if he had the good of the commonwealth in view,) but that you might be deluded and certain people execute projects adverse to your interests. The parties who have indicted the decree and caused delay, and through whom it is invalid, are we. It would be absurd then, if that for which thanks is due to us should be the safety of our opponents. Nor indeed is the thing so simple as one imagines. If there was no one else that would draw decrees like him without regard to your interests, the thing would have been less serious perhaps: but, as there are many such persons, it is not well for you to leave the decree unrepealed. For who will not draw decrees boldly in future, when this one is adjudged blameless? Who will refuse to ask your votes upon them? Who will indict them? You have not therefore to consider, whether this decree is void by lapse of time, but to reflect that by your verdict upon this, if you pronounce it legal, you will give impunity to men who may wish to wrong you hereafter.

[1] The supposed argument of Aristocrates would be indeed absurd. For if the jury acquitted him upon his trial, the decree would be pronounced legal and remain in force: if either he declined to support it, or a verdict were found against him, then the decree certainly would have had no more effect than a Probouleuma, but that, as the orator says, would be owing entirely to the prosecution, and no thanks for it to Aristocrates. One is inclined to think that Demosthenes is here raising up a straw, in order to blow it down again: yet it is difficult to judge how far it might be necessary to caution the jurors even against so gross a fallacy.

Again, Athenians: it has not escaped me that Aristocrates, having no straightforward or honest defence to urge, will resort to fallacies of this kind — that similar decrees have been drawn up by many persons before. This, men of Athens, is no proof that the defendant has made a legal motion; as there are many causes through which you have often been led into error. For example: if any one of the condemned decrees had not been indicted before you, it would have been in force, I presume: and yet it must have been moved contrary to law. Or, if any was indicted, but either by the collusion of the prosecutor or by his incompetency to manage the case escaped condemnation, this does not prevent its being illegal. Were not the judges then true to their oaths? Yes. How so? I will explain. They are sworn to decide according to the best of their judgment; but their judicial opinion is formed from what they hear; therefore, when they give their verdict according to this, they act conscientiously. Every one has a clear conscience, who has not voted contrary to his opinion either from enmity or favour or any other unrighteous cause. If, having an instructor, he was left in ignorance of any point, he ought not to be punished for his misunderstanding: it is the person who, knowing the truth, has betrayed the judges or leads them astray, that is liable to the curse. Therefore in every assembly the crier pronounces a curse, not upon those who are misled, but upon those who speak to mislead either the Council or the People or the Jury. Don't let it be told you then, that such decrees have been passed; let it be shown that they are lawful. Don't let them plead that other men have pronounced former decrees to be valid; but require them to satisfy you, that their arguments upon this decree are juster than ours. If they are unable to do so, it is not right for you, I think, to let the delusion of others prevail over your own understanding. Besides, as it appears to me, it is sheer impudence to argue in such a way, that similar decrees have been passed by others before. It is not because the laws have been at some former time transgressed, and you have followed the precedent, that you ought to be acquitted: on the contrary, you should be convicted all the more on that account. For as, if any of the former parties had been condemned, you would not have framed this motion, so, if you are convicted now, no one will frame such again.

That Aristocrates has drawn his decree plainly in defiance of all the laws, he will not be able, I think, to deny: but I have seen a man before now, O Athenians, who upon his trial for an illegal measure, when he was convicted by the laws, urged and insisted

strongly that what he had proposed was for your advantage: a foolish, or rather an impudent line of argument, I take it; for, even if his points are good in all other respects, inasmuch as you are sworn to decide according to the laws, and he asks you to confirm a decree which he himself cannot show to be rightfully drawn, it can hardly be for your good, since you ought to set the highest value upon the observance of your oaths: at the same time this impudence has a sort of reasonableness about it. To the defendant however even this line of argument will not be open: for the decree, entirely opposed as it is to the laws, is more injurious than illegal. And this also I will prove to you immediately. That I may make my meaning clear in the fewest possible words, I will mention an example familiar to you all.

You know it is good for the commonwealth, that neither the Thebans nor the Lacedæmonians should be powerful; but that the one should have the Phocians for a counterpoise, the other some other people; for by such a state of things your safety and preëminence are established. Be sure then, it is equally advantageous for your countrymen of Chersonesus, that none of the Thracians should be powerful: for their mutual quarrels and jealousies are the best and firmest of all safeguards for the Chersonese. This decree however, by giving security to the chief minister of Cersobleptes, and putting the generals of the other princes in fear and dread of being accused, renders the latter powerless, and the former (a single monarch) strong.

That you may not be greatly surprised at your decrees having so important an effect, I will remind you of a circumstance which you are all acquainted with. When Miltocythes revolted from Cotys, (the war had then lasted for some time, Ergophilus had been removed, and Autocles was about to sail from Athens as commander,) a certain decree was framed here, under the terror of which Miltocythes, thinking that you were not on his side, withdrew, and Cotys got possession of the Sacred Mountain and the treasures. Afterwards, men of Athens, Autocles was brought to trial for having caused the ruin of Miltocythes; the time for an indictment against the author of the decree had expired, and the thing had taken a ruinous turn for the commonwealth.

Be assured then that now, unless you repeal this decree, it will marvellously discourage both the princes and their generals: for they will imagine that they are wholly disregarded, and that you are turning round to Cersobleptes. If in consequence of such belief they should yield up their kingdom when Cersobleptes takes

an opportunity of attacking them, see again what will happen. Let me suppose that Cersobleptes commits hostilities against us, which he is more likely to do than otherwise if he has the means, shall we not have recourse to them, and strive by their means to weaken him? Suppose then they should say to us — "You, Athenians, not only refused to succour us when we were attacked, but made it wofully perilous for us to defend ourselves, by passing a decree that, if any one killed the man who was opposing your interests and ours, he might lawfully be apprehended: you are not entitled therefore to call for our aid in an affair which you managed so badly both for yourselves and for us." — Tell me; if they should say this, will not their language be juster than ours? I imagine so.

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Nor again am I able to see, that all men will not demand this honour, who have any pretensions to call themselves your benefactors, if you grant it to Charidemus: for example, if you please, Simon, Bianor, Athenodorus, hundreds of others. Should we then pass the same vote in favour of all, we shall unthinkingly, as it seems, be acting the part of mercenaries, making ourselves a bodyguard to each of these men; should we pass it in favour of Charidemus, and not of the rest, the rejected will have a right to complain. Suppose now that Menestratus the Eretrian should ask us to vote him the same honour, or Phayllus the Phocian, or any other potentate, (there are many, you know, with whom circumstances often lead us to contract friendship;) shall we vote it to all, or shall we not? We shall vote it very possibly. And what honourable excuse shall we have, O Athenians, when, pretending to be leaders of the Greeks in the cause of freedom, we appear as the bodyguards of men who have raised themselves to be autocrats over the people? I can see none. If such a vote should be accorded to any person, (which I deny,) it should be given, first, to one who has never done any wrong, secondly, to one who will not be able to do wrong if he desires, and further, (honestly speaking,) to one who evidently to all men seeks it as a protection against injury, not as a means to injure others with impunity.

That Charidemus is not a person faultless in his conduct towards you, and not one who seeks to get your vote as a protection against injury, I shall not stop to prove: but that he is not to be trusted even for the future, I will show with your permission; and see if you think I discuss the question fairly.

I consider, O Athenians, that all persons who desire to become citizens out of love for our customs and our laws, on being admitted to these, would at the same time settle among us and partake the benefits which they coveted. Those who have no love or admiration for your institutions, but regard only the advantage which they get by appearing to be honoured by you, they, I expect, or rather I am quite certain, whenever they spy a hope of greater advantage elsewhere, will run after that without troubling themselves in the least about you. For example — that you may see to what I allude — this Python, when he had just killed Cotys, and did not think it safe to go to every place, came to you and requested you to make him a citizen, and preferred you to all the world: but now that he thinks Philip's connexion suits him better, he cares not an atom for you but attaches himself to him. For with those who live for ambitious objects there is nothing, men of Athens, there is nothing stable or honest: you must get the better of them, if you are wise, by taking precaution, not trust them first and accuse them afterwards. Could we assume therefore, O Athenians, contrary to the fact, that Charidemus himself has been and is and will be true to our interests, and will never alter his views, you ought not to vote him these privileges any the more. If indeed he were getting the protection of the decree for any other purpose than to aid Cersobleptes, it would not have been so bad: but I find upon calculation, that the person for whom he will use the advantage given by the decree is not worthy to be trusted either by us or by him. . . .

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But besides that the decree is impolitic, I must inform you that it is not for the honour of Athens, that she should be known to have decreed such a thing. If the decree, O Athenians, had been for the benefit of a man residing in a city and living under constitutional government, bad as it is, it would have been less disgraceful: but it has been drawn in favour of Charidemus, who resides in no city at all, but is the general of a Thracian and a prince, whose royal authority he uses to commit acts of injustice. Of course you know, that all these mercenary leaders seize upon Greek cities and endeavour to establish their own dominion: if the truth is to be spoken, they go about everywhere the common enemies of all who wish to live as freemen under the laws of their country. Is it becoming then or honourable in you, O Athenians, to have passed this vote before all the world, giving protection to a man who will plot

against the first people he meets for his own selfish purposes, and to have proclaimed that those who defend their own liberties shall be excluded from your alliance? I do not conceive that it is either honourable or worthy of you. Can it be otherwise than disgraceful, when you reproach the Lacedæmonians for making those terms which put the Asiatic Greeks under the power of the king, that you should yourselves surrender to Cersobleptes the Europeans and all whom Charidemus thinks he can master? For this decree does nothing less, when it is not defined what his general may do or may not do, but all who defend themselves are threatened with such fearful consequences.

Again, O Athenians, I would remind you of an actual occurrence, by which you will still more clearly see how absolutely necessary it is to rescind this decree. On a certain occasion once you made Ariobarzanes a citizen, and Philiscus also on his account, just as now you have made Charidemus on account of Cersobleptes. Philiscus, resembling this man in his principles of action, got possession of Greek cities by the power of Ariobarzanes, took up his quarters in them and committed divers atrocities, outraging free women and children, and doing all that a man brought up in ignorance of laws and civil government would do, if armed with authority. Well: in Lampsacus there are found two men; (one was named Thersagoras, and the other Execestus;) who, holding the same sentiments as our own people about tyrants, kill Philiscus, as they were right to do, under a sense of their obligation to free their country. Suppose any of the orators, who supported Philiscus at the time when he was giving pay to the mercenaries in Perinthus, when he was master of all the Hellespont and the most powerful of the lieutenants, had proposed as Aristocrates has now, that whoever killed Philiscus might lawfully be apprehended in the territory of our allies; see, by heavens, into what disgrace our commonwealth would have fallen! Thersagoras and Execestus came to Lesbos and resided there: had any of the friends or children of Philiscus laid hands upon either of them, he must have been given up by virtue of your decree. Would not your conduct have been shameful and dreadful, O Athenians, if, while you set up in brass and reward with the highest honours those who have performed such a feat at Athens, you had proscribed as outlaws men of other countries who showed the same devotion to their fatherland? Happily in the case of Philiscus you were not thus imposed upon, and did not incur the shame: in this case, if you take my advice, you will guard against it.

For when nothing is defined, but the clause is simply "if any one shall kill Charidemus," very possibly something of this kind might occur.

I would now briefly examine the conduct of Charidemus, and expose the outrageous impudence of his panegyrists. One thing I promise you — and let no man be offended at the promise — I will show not merely that he is unworthy of the protection which Aristocrates has given him, but that he deserves the severest chastisement, if men do deserve to be punished who have evil intentions, who impose upon you, who invariably take part against you. Some of you perhaps, considering that the man has been made a citizen and afterwards honoured with golden crowns as a benefactor, wonder how such gross deception could have been practised upon you so easily. Be assured, men of Athens, it has been practised: how you have not unnaturally fallen into the error, I will explain to you. The reason is that, while you, men of Athens, judge rightly of many things, you do not use your judgment consistently. For instance, what do I mean? If you were asked, which of all classes in the state you regard as the vilest, you would not say the agriculturists, nor the merchants, nor the mining people, nor any of that kind; but if any one said, the persons who are accustomed to make speeches and motions for hire, I am sure it would meet with your assent. Up to this point therefore you judge well; not so rightly in what follows: for on those, whom you think the most worthless of men, you depend for a correct estimate of every one's character; and they tell you that a man is good or bad, whom it suits their purpose to call such, not whom it is right and proper: which is exactly what the orators have done all along with this Charidemus, as you will agree with me, when you have heard my account of his actions.

The campaigns which he has served against Athens originally as a slinger and light-armed soldier I do not set down as an offence, nor the fact that he once kept a pirate vessel and plundered your allies. I pass by all this. Why? Because, men of Athens, the pressure of necessity destroys all calculations about right and wrong, so that a man who judges fairly must not take a nice account of such things. But let me explain how he began to do you injury when he was a mercenary leader and at the head of some troops. First of all, he was hired by Iphicrates, and served under him for more than three years. When you deposed Iphicrates from his command, and sent out Timotheus to conduct the war against Amphipolis and Chersonesus, those Amphipolitan hostages

whom Iphicrates had received from Harpalus and entrusted to his charge, although you passed a resolution requiring him to bring them to Athens, he delivered up to the Amphipolitans; and that prevented your taking Amphipolis. When Timotheus offered again to hire him and his troops, he declines the engagement with him, but sailed away with your pinnaces to Cotys, whom he knew for certain to be your greatest enemy. Afterwards, when Timotheus resolved to commence the war against Amphipolis before that against Chersonesus, and he had no opportunity of doing you any mischief there, he hires himself again to the Olynthians your enemies, and to those who held Amphipolis at that time. On his passage thither, having set sail from Cardia to fight against us, he was taken by our galleys: but on account of the emergency and our wanting soldiers for the war against Amphipolis, instead of his being punished for not having given up the hostages and for deserting and carrying the vessels to Cotys your enemy he exchanged pledges and served on your side. And for the very thing which he should have been grateful to you for, not having been put to death as he deserved, the commonwealth, as if she were under an obligation, has given him crowns and citizenship and what you all know.

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It is worth your while also to inquire, O Athenians, how it was that our ancestors awarded recompenses and honours to real benefactors, whether they were citizens or strangers. And if you see that they awarded them better than you, it will be well to imitate them; if you find your own method the best, you can go on with it. In the first place, Themistocles who gained the naval fight at Salamis, and Miltiades who commanded at Marathon, and many others whose services are not on a level with those of modern generals, were not set up in brass by your ancestors, nor received from them any extraordinary homage. Were your ancestors then not grateful to their benefactors? Assuredly they were, O Athenians: and they showed their gratitude in a manner worthy both of themselves and them: for, high as were the merits of all, they elected these to be their leaders; and to the wise, who will look at the truth of things, it is a far greater honour than a brazen statue, to be placed at the head of brave and honourable men. Verily, O Athenians, your ancestors renounced not their share in any of those glories; and there is no one who will attribute the battle of Salamis to Themistocles, but to the Athenians, nor the battle

of Marathon to Miltiades, but to the commonwealth. But now, O Athenians, people say that Timotheus took Corcyra, and Iphicrates cut in pieces the Spartan division, and Chabrias won the seafight at Naxos; for you seem yourselves to resign the merit of those exploits by the extravagance of the honours which you have given to each of these men on their account.

Thus honourably and advantageously for themselves did they bestow their political rewards; thus injudiciously do we. But how the rewards of strangers? Our forefathers, when Menon the Pharsalian had given ten talents in money for the war at Eion by Amphipolis, and succoured you with three hundred cavalry of his own retainers, did not pass a decree, that whoever killed him should be liable to arrest, but gave him citizenship, and held that honour to be sufficient. And again when Perdiccas, who reigned in Macedonia at the time of the barbarian invasion, destroyed the barbarians retreating from Platæa, and completed the disaster of the king, they did not pass a decree, that any one should be liable to arrest if he killed Perdiccas, by whom war had been declared against the king on our account; but they gave him citizenship only. For then indeed so valuable was Athenian citizenship esteemed by all men, that, in order to obtain it, they were willing to render such important services; while now it is so worthless, that many of your adopted citizens have done you more mischief than open enemies. And not only has this gift of the commonwealth become vile and contemptible, but all have become so through the wickedness of the detestable and accursed orators, who draw up these decrees without scruple; who have carried their disgraceful cupidity to such an excess, that, like men who put up wretched trumpery for auction, they sell your honours and rewards at the cheapest prices, drawing for a number of people on the same terms any decree they like to have.

First — that I may begin with the latest examples — they not only accorded to Ariobarzanes and his sons, three in number, everything which they desired, but associated with him two citizens of Abydus, deadly enemies of Athens and men of the worst character, Philiscus and Agavus. Again — when Timotheus was considered to have rendered you good service, besides conferring upon him all the highest distinctions, they associated with him Phrasicrides and Polysthenes, who were not even freemen, but rascals who had done such things as decency forbids to mention. And on this last occasion, when they were for giving such honours as they thought fit to Cersobleptes, and were intent upon that

object, they associate with him two persons, one of whom has done all the mischief that you have heard, and the other, a man named Euderces, no one knows anything about. It is from such causes, O Athenians, that what was great heretofore appears little now, and the thing is progressing even still further, and these distinctions are no longer sufficient, but, unless you guard the persons of each of these men, there is no thanks, it would seem, for what you have done before.

That things have come to this disgraceful pass, if the truth must be spoken with freedom, is owing, men of Athens, principally to yourselves. For you like no longer even to bring offenders to justice, but the practice is gone out of the commonwealth. Yet look how your ancestors chastised those who offended them, and see whether they did it in your style. When they found Themistocles arrogating superiority over them, they banished him from the city, and condemned him for correspondence with the Mede. And Cimon, because he stirred up of his own authority a revolution at Paros, they fined fifty talents, and were within three votes of condemning him to death. So they dealt with men who had conferred on them such mighty obligations. Justly! They would not barter to them for what they had done their own freedom and magnanimity; but honoured them only while they were upright, and restrained their criminal attempts. You, O Athenians, acquit men who are guilty and plainly proved to be guilty of the gravest offences, if they merely say one or two witty things, and some fellow-tribesmen chosen to be their advocates petition for them: should you even convict any one, you fix the penalty at five-and-twenty drachms.

In former times the state herself was wealthy and flourishing, and no individual was raised above the multitude. Is proof wanting? Whoever knows the style of house which Themistocles had, and Miltiades, and the illustrious of that day, perceives it to have been no grander than that of the multitude, while the public structures and edifices are so magnificent and beautiful, that room is not left for any succeeding generation to surpass them: yonder gateway, docks, porticoes, the Piræus, all the fabrics by which you see the city adorned. Now each of your statesmen has a private fortune so immense, that some of them have built their houses more splendid than many public edifices, some have bought up a quantity of land, more than all you in the court have amongst you: while, as to the state buildings which you put up and whitewash, I am ashamed to say how paltry and

miserable they are. But can you mention aught that you have won as a people and will bequeath, as your forefathers bequeathed Chersonesus, Amphipolis, the glory of noble actions? — glory which politicians of this stamp, with all the waste they make of it, are unable to extinguish, O Athenians, and no wonder. For Aristides then, who was empowered to assess the tribute, did not increase his fortune by a single drachm; but, when he died, the country buried him; and you, whenever you required anything, had ampler funds in your treasury than all the rest of the Greeks, so that, for whatsoever period you voted an expedition, you went out with pay for the whole time. Now the persons who manage our state affairs have risen from indigence to wealth, and provided themselves with plenty to last them for support; whilst you have not provisions in your stores for a single day, but, when anything is to be done, you are destitute of means. For the people were formerly masters of the statesmen, but now are their servants. The fault is theirs who propose such decrees, and accustom you to despise yourselves and hold one or two individuals in respect. These persons then become the heirs of your renown and your possessions; you have not the least enjoyment of them, but are witnesses of the prosperity of others, and come in for nothing but to be cheated. How deep would be the groaning of those men who died for freedom and for glory, who left memorials of so many noble deeds, could they see that Athens has acquired the rank and style of a dependent, and is deliberating whether she must guard the person of Charidemus! Charidemus! alas the day!

And yet this is not the cruel part of it, that we deliberate less wisely than our forefathers, whose merits are transcendent, but that we do it worse than any people. Is it not disgraceful — when these Æginetans, inhabiting so small an island and having no reason to be proud themselves, have not even to this day made a citizen of Lampis, who is the largest shipowner in Greece and who has embellished their city and port, but have with much reluctance granted him exemption from the alien-tax — when these accursed Megarians so well maintain their own dignity, that when the Lacedæmonians sent and requested them to make Hermon the pilot a citizen, who with Lysander captured two hundred ships on the occasion of our disaster at Ægos-Potamos, they replied that, when they saw him created a Spartan, they would themselves create him a Megarian — and when the Orites, inhabiting only a fourth part of Eubœa, have so treated this very Charidemus, whose mother is a citizen there, (who and what his father is, I will not

say; for we need not make too minute inquiries about him:) however, although he himself finds one-half of his pedigree, they have not to this day conceded to him the other half, but he is classed there among the illegitimate, just as here formerly the illegitimate were registered in Cynosarges — I say, is it not disgraceful that you, men of Athens, after imparting to him your full franchise and conferring other honours, should give him this also in addition? For what reason? What ships did he ever capture for your benefit, that he is plotted against by the losers? What city has he ever taken and delivered into your hands? What perils has he encountered for your sake? What enemies of yours has he adopted for his own? No one can say.

I wish, before I sit down, men of the jury, to say a few words to you about the laws which we have exhibited: bearing them in mind, I think you will better be able to watch these men, should they attempt to mislead and impose on you. The first law has positively declared, that, if any one kill another, the council shall have cognizance: Aristocrates after the words, "if any one shall kill," has immediately added, that he may be lawfully apprehended. Keep this in your remembrance, that to try a man, and to proscribe him without allowing trial, are the most opposite things in the world. Again, the second law forbids one to ill-use or extort money from even a convicted murderer: the defendant, in making him liable to arrest, has allowed all these things; for it will be in the power of the captors to do what they please. The law requires him to be carried before the Judges, even though he be taken in the native land of the deceased: Aristocrates has permitted the very man who brings the charge to carry him to his own house, even though he has taken him in a foreign country. There are certain offences for which the law has given permission to take life: Aristocrates, without any preamble, even if life be taken under such circumstances, gives up to punishment a man whom the law lets off with impunity. If such misfortune has occurred to any one, the law requires that satisfaction shall first be demanded: Aristocrates on the contrary, without himself appointing any trial, without demanding satisfaction from the persons against whom his claim is, declares at once that the homicide may be arrested, and, whoever attempts to rescue him, he excludes that instant from the benefit of our alliance. The laws ordain that hostages to the number of three may be taken from the people among whom the homicide dwells, if they refuse to render justice: the defendant, if any one should rescue him from the

captor, not liking to give him up before judgment, excludes him from our alliance immediately. The legislator forbids any one to introduce a law, unless he make it the same for all: the defendant frames a special decree for an individual. The law does not permit a decree to be of greater validity than a law: Aristocrates, when so many laws are in existence, annuls them, and establishes a decree.

Keep these things in your memory while you sit in judgment. Reject, refuse to hear the arguments by which they will strive to lead you astray, but bid them show you, where he has ordered any trial, or where he has said that the party convicted of murder shall suffer the penalty. Had he either said that any party tried and condemned elsewhere should be punished, or himself appointed a trial to determine the fact of homicide, or whether it were justifiable or unjustifiable, he would have done no wrong. But when after employing the simple term of accusation, "if any one shall kill," and omitting to add, "and shall be convicted of murder," or "shall be adjudged to have killed," or "let him submit to judgment for the murder," or "he shall be amenable to the same penalty as if he killed an Athenian" — omitting (in short) everything that is just — he has inserted a clause for the arrest of the homicide; do not be imposed on, but rest assured that his decree is a most complete violation of law.

SECTION 4. ROMAN

NO. 1. GAIUS: THE SACRAMENTAL ACTION[1]

BOOK IV (DE ACTIONIBUS)

Legis Actiones

There are, moreover, some actions which are formed on the model of a *legis actio*, and others which have an independent existence and force. To make this clear we must in the first instance treat of the *legis actiones*.

The actions in use in the time of the ancients were styled *legis actiones*, either because they were enacted by the *leges*, for, in

[1] [Reprinted from "Outline of Roman History from Romulus to Justinian" (including translations of the Twelve Tables, the Institutes of Gaius, and the Institutes of Justinian), by DAVID NASMITH, Q.C., LL.B. (London, Butterworths, 1890).

Little is known of the life of Gaius. He was born about 110 A.D. and died about 180. His "Institutes," which were the foundation of Justinian's "Institutes," were not brought to light until their discovery by Niebuhr at Verona in 1816.]

those days, the edicts of the prætors to which many actions owe their origin were not in existence; or because they were adapted to the words of the *leges*, and their terms were adhered to as rigidly as those of the *leges* themselves. Hence, when in an action brought for cutting down vines, the plaintiff, in his plaint, used the word "*vites*" instead of "*arbores*," it was held that the action must be dismissed, as "*arbores*" is the word used in the law of the Twelve Tables concerning cutting down trees in general, and upon which the action was founded.

There were five forms of the *legis actio*, viz., *sacramentum*, *judicis postulatio*, *condictio*, *manus injectio*, and *pignoris captio*.

Sacramentum

The *actio sacramenti* was general, and was used whenever the law had not expressly provided another form. This form of action was as perilous for the party in the wrong as is our present *actio certæ creditæ pecuniæ*, on account of the *sponsio*, the risk of which was run by the defendant who defended vexatiously, and on account of the *restipulatio*, the risk of which was run by the plaintiff who made an unfounded claim. The unsuccessful party forfeited the amount of the *sacramentum* to the public treasury by way of penalty, for the securing of which sureties were given to the prætor; whereas, now, the penalty of the *sponsio* and the *restipulatio* goes to the successful party.

The amount of the *sacramentum* was either 500 or 50 *asses* — 500 when the value of the subject-matter in dispute was 1000 *asses*, or more; 50 when its value was below that amount. Such were the provisions of the Twelve Tables. But if the matter in question was the liberty of a man, though the man might be of the greatest value, yet it was provided by the same law that the *sacramentum* should be 50 *asses*. The object being that the *vindex* or asserter of liberty should not be fettered by the necessity to find security for a heavy amount. . . .

. . . . to come and receive a *judex*. The litigants having presented themselves at the time stated, a *judex* was assigned to them, in compliance with their request, from the numbers of the decemvirs, to take the case thirty days after, according to the provisions of the *lex Pinaria*. Before the passing of that *lex* it was not the practice to assign a *judex*. We have already said that if the value of the matter in dispute was less than 1000 *asses*, the *sacramentum* was 50 and not 500 *asses*. When, however, it became the

practice to assign a *judex*, the parties gave each other notice to appear before him on the next day but one. When, then, before him, each party stated the points of his case, this was termed the *causæ collectio*, *i.e.*, a short outline of the case of each.

If the action was *in rem* for a movable or moving thing that could be brought into court, the thing itself was brought before the *judex*, and was there claimed in the following manner: — The claimant, holding a wand, laid his hand on the thing claimed, for example, a slave, and said, "I declare this man to be my property *ex jure Quiritium* in accordance with his status (*secundum suam causam*) as I have declared it." Then, touching him with his wand, he said, "See, I lay my wand upon him." His adversary, in his turn, employed the same words and acts. Each having thus asserted his claim, the prætor said, "Let go the man, both of you (*Mittite ambo hominem*)." Whereupon each did so. He who had first asserted his claim then said to the other, "State the grounds of your claim." The other replied, "I have satisfied the law, having placed my rod upon him." Then the first claimant said, "Mark you, as you have made an unjust claim, I challenge you to deposit 500 *asses*." His adversary then said, "I too challenge you." The *asses* thus deposited were styled the *sacramentum*. The remaining formalities were the same as those used in an action *in personam;* the prætor then assigned the *vindiciæ* to one of the parties, *i.e.*, he gave to one of them the interim possession of the subject of the litigation, ordering him at the same time to give sureties *litis et vindiciarum*, *i.e.*, for the thing in dispute and the mesne profits, or the value of the interim possession, in the event of losing the case. The prætor also took other sureties for the *sacramentum* from each party, inasmuch as that went to the treasury. The wand was used instead of the spear, — the emblem of legal title, — for, in the estimation of the ancients, no title was more indefeasible than that of capture from the enemy. This is the reason why the spear is set up in front of the courts of the *centumviri*.

If the nature of the object in dispute was such as to prevent its being brought into court without inconvenience — for instance, if it were a column, or a herd of cattle — some portion was taken into court, and the claim was made upon the part in the name of the whole. Thus, in the case of a herd, one sheep, or one goat, out of the flock, was led into court, or, perhaps, a lock of wool merely taken from one of the beasts; whilst, from a ship, or a column, a portion was broken off; so if the matter in

dispute was a field, or a house, or even an inheritance, some part was taken therefrom and brought into court; and the claim was made on that part as if the whole had been present; *e.g.*, a clod was taken from the field, or a tile from the house; so if the dispute was about an inheritance.

NO. 2. THE SPEECH OF M. T. CICERO IN DEFENCE OF TITUS ANNIUS MILO[1]

The Argument

Titus Annius Milo, often in the following speech called only Titus Annius, stood for the consulship while Clodius was a candidate for the prætorship, and daily quarrels took place in the streets between their armed retainers and gladiators. Milo, who was dictator of Lanuvium, his native place, was forced to go thither to appoint some priests, etc.; and Clodius, who had been to Aricia, met him on his road. Milo was in his carriage with his wife, and was accompanied by a numerous retinue, among whom were some gladiators. Clodius was on horseback, with about thirty armed men. The followers of each began to fight, and when the tumult had become general, Clodius was slain, probably by Milo himself. The disturbances at Rome became so formidable that Pompey was created sole consul; and soon after he entered on his office, A.U.C. 702, Milo was brought to trial. This speech, however, though composed by Cicero, was not spoken [in its present form], for he was so much alarmed by the violence of Clodius's friends, that he did not dare to use the plain language he had proposed. Milo was convicted and banished to Marseilles.

1. Although I am afraid, O judges, that it is a base thing for one who is beginning to speak for a very brave man to be alarmed, and though it is far from becoming, when Titus Annius Milo himself is more disturbed for the safety of the republic than for his own, that I should not be able to bring to the cause a similar greatness of mind, yet this novel appearance of a new [2] manner of trial alarms my eyes, which, wherever they fall, seek for the former customs of the forum and the ancient practice in trials. For your assembly is not surrounded by a circle of bystanders as usual; we are not attended by our usual company.[3]

2. For those guards which you behold in front of all the temples, although they are placed there as a protection against violence, yet they bring no aid to the orator; so that even in the forum and

[1] [Translated by C. D. Yonge, B.A. ("Cicero's Orations," Vol. III, pp. 390–437, Bell & Daldy, London, 1871). Cicero was born Jan. 3, 106 B.C. and was assassinated Dec. 7, 43 B.C.]

[2] This was an extraordinary trial, held under a new law just passed by Pompey; and it was presided over, not by the prætor, but by Lucius Domitius Ahenobarbus, who was expressly appointed by the comitia president of the judges on this occasion.

[3] Pompey was present at the trial, surrounded by his officers, and he had filled the forum and all its precincts with armed men, for the sake of keeping the peace.

in the court of justice itself, although we are protected with all salutary and necessary defences, yet we cannot be entirely without fear. But if I thought this adverse to Milo, I should yield to the times, O judges, and among such a crowd of armed men, I should think there was no room for an orator. But the wisdom of Cnæus Pompeius, a most wise and just man, strengthens and encourages me; who would certainly neither think it suitable to his justice to deliver that man up to the weapons of the soldiery whom he had given over as an accused person to the decision of the judges, nor suitable to his wisdom to arm the rashness of an excited multitude with public authority.

3. So that those arms, those centurions, those cohorts, do not announce danger to us, but protection; nor do they expect us only to be calm, but even to be courageous; nor do they promise only assistance to my defence, but also silence. And the rest of the multitude, which consists of citizens, is wholly ours; nor is there any one individual among those whom you see from this place gazing upon us from all sides from which any part of the forum can be seen, and watching the result of this trial, who, while he favors the virtue of Milo, does not think that this day in reality his own interests, those of his children, his country, and his fortunes, are at stake.

4. There is one class adverse and hostile to us, — those whom the madness of Publius Clodius has fed on rapine, or conflagration, and on every sort of public disaster; and who were, even in the assembly held yesterday, exhorted [1] to teach you by their clamor, what you were to decide. But such shouts, if any reached you, should rather warn you to retain him as a citizen who has always slighted that class of men, and their greatest clamor, in comparison with your safety. Wherefore, be of good courage, O judges, and lay aside your alarm, if indeed you feel any; for if ever you had to decide about good and brave men, and about citizens who had deserved well of their country, if ever an opportunity was given to chosen men of the most honorable ranks to show by their deeds and resolutions that disposition towards brave and good citizens which they had often declared by their looks and by their words, all that power you now have, when you are to determine whether we who have always been wholly devoted to your authority are to be miserable, and to mourn for ever, or whether, having been long harassed by the most abandoned citizens, we

[1] Munatius Planeus, the day before, had exhorted the people not to suffer Milo to escape.

shall at length be reprieved and set up again by you, your loyalty, your virtue, and your wisdom.

5. For what, O judges, is more full of labor than we both are, what can be either expressed or imagined more full of anxiety and uneasiness than we are, who being induced to devote ourselves to the republic by the hope of the most honorable rewards, yet cannot be free from the fear of the most cruel punishments? I have always thought indeed that Milo had to encounter the other storms and tempests in these billows of the assemblies because he always espoused the cause of the good against the bad; but in a court of justice, and in that council in which the most honorable men of all ranks are sitting as judges, I never imagined that Milo's enemies could have any hope of diminishing his glory by the aid of such men, much less of at all injuring his safety.

6. Although in this cause, O judges, we shall not employ the tribuneship of Titus Annius, and all the exploits which he has performed for the safety of the republic, as topics for our defence against this accusation, unless you see with your own eyes that a plot was laid against Milo by Clodius; and we shall not entreat you to pardon us this one offence in consideration of our many eminent services to the republic, nor shall we demand, if the death of Publius Clodius was your safety, that on that account you should attribute it rather to the virtue of Milo, than to the good fortune of the Roman people; but if his plots are made clearer than the day, then indeed I shall entreat, and shall demand of you, O judges, that, if we have lost everything else, this at least may be left us, — namely, the privilege of defending our lives from the audacity and weapons of our enemies with impunity.

7. But before I come to that part of my speech which especially belongs to this trial, it seems necessary to refute those things which have been often said, both in the senate by our enemies, and in the assembly of the people by wicked men, and lately, too, by our prosecutors; so that when every cause of alarm is removed, you may be able distinctly to see the matter which is the subject of this trial. They say that that man ought no longer to see the light who confesses that another man has been slain by him. In what city, then, are these most foolish men using this argument? In this one, forsooth, where the first trial for a man's life that took place at all was that of Marcus Horatius, a most brave man, who even before the city was free was yet acquitted by the assembly of the Roman people, though he avowed that his sister had been slain by his hand.

8. Is there any one who does not know, that when inquiry is made into the slaying of a man, it is usual either altogether to deny that the deed has been done, or else to defend it on the ground that it was rightly and lawfully done? unless, indeed, you think that Publius Africanus was out of his mind, who, when he was asked in a seditious spirit by Caius Carbo, a tribune of the people, what was his opinion of the death of Tiberius Gracchus, answered that he seemed to have been rightly slain. For neither could Servilius Ahala, that eminent man, nor Publius Nasica, nor Lucius Opimius, nor Caius Marius, nor indeed the senate itself during my consulship, have been accounted anything but wicked, if it was unlawful for wicked citizens to be put to death. And therefore, O judges, it was not without good reason, that even in legendary fables learned men have handed down the story, that he, who for the sake of avenging his father had killed his mother, when the opinions of men varied, was acquitted not only by the voices of the gods, but even by the very wisest goddess. And if the Twelve Tables have permitted that a nightly robber may be slain anyway, but a robber by day if he defends himself with a weapon, who is there who can think a man to be punished for slaying another, in whatever way he is slain, when he sees that sometimes a sword to kill a man with is put into our hands by the very laws themselves.

9. But if there be any occasion on which it is proper to slay a man, — and there are many such, — surely that occasion is not only a just one, but even a necessary one, when violence is offered, and can only be repelled by violence. When a military tribune offered violence to a soldier in the army of Caius Marius, the kinsman of that commander was slain by the man whom he was insulting; for the virtuous youth chose to act, though with danger, rather than to suffer infamously: and his illustrious commander acquitted him of all guilt, and treated him well. But what death can be unjust when inflicted on a secret plotter and robber?

10. What is the meaning of our retinues, what of our swords? Surely it would never be permitted to us to have them if we might never use them. This, therefore, is a law, O judges, not written, but born with us, — which we have not learnt, or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught, but to which we were made, — which we were not trained in, but which is ingrained in us, — namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honorable. For

laws are silent when arms are raised, and do not expect themselves to be waited for, when he who waits will have to suffer an undeserved penalty before he can exact a merited punishment.

11. The law very wisely, and in a manner silently, gives a man a right to defend himself, and does not merely forbid a man to be slain, but forbids any one to have a weapon about him with the object of slaying a man; so that, as the object, and not the weapon itself, is made the subject of the inquiry, the man who had used a weapon with the object of defending himself would be decided not to have had his weapon about him with the object of killing a man. Let, then, this principle be remembered by you in this trial, O judges; for I do not doubt that I shall make good my defence before you, if you only remember — what you cannot forget — that a plotter against one may be lawfully slain.

12. The next point is one which is often asserted by the enemies of Milo, who say that the senate has decided that the slaughter by which Publius Clodius fell was contrary to the interests of the republic. But, in fact, the senate has approved, not merely by their votes, but even zealously. For how often has that cause been pleaded by us in the senate? with what great assent of the whole body? and that no silent nor concealed assent; for when in a very full senate were there ever four or five men found who did not espouse Milo's cause? Those lifeless assemblies of this nearly burnt [1] tribune of the people show the fact; assemblies in which he daily used to try to bring my power into unpopularity, by saying that the senate did not pass its decrees according to what it thought itself, but as I chose.

13. And if, indeed, that ought to be called power, rather than a moderate influence in a righteous cause on account of great services done to the republic, or some popularity among the good on account of dutiful labors for its sake, let it be called so, as long as we employ it for the safety of the good in opposition to the madness of the wicked.

14. But this investigation, though it is not an unjust one, yet is not one which the senate thought ought to be ordered; for there were regular laws and forms of trial for murder, or for assault; nor did the death of Publius Clodius cause the senate such concern and sorrow that any new process of investigation need

[1] After Clodius's death, Munatius Plancus, the tribune, exposed his body on the rostrum, and harangued the people against Milo; the populace carried the body into the senate-house, and made a pile of the seats to burn it, in doing which they burnt the senate house, and Plancus himself with difficulty escaped.

have been appointed, for when the senate had had the power of decreeing a trial in the matter of that impious pollution of which he was guilty taken from it, who can believe it thought it necessary to appoint a new form of trial about his death? Why then did the senate decide that this burning of the senate-house, this siege laid to the house of M. Lepidus, and this very homicide, had taken place contrary to the interest of the republic? Why, because no violence from one citizen to another can ever take place in a free state which is not contrary to the interests of the republic. For the defending of oneself against violence is never a thing to be wished for; but it is sometimes necessary, unless, indeed, one could say that that day on which Tiberius Gracchus was slain, or that day when Caius was, or the day when the arms of Saturnius were put down, even if they ended as the welfare of the republic demanded, were yet no wound and injury to the republic.

15. Therefore I myself voted, when it was notorious that a homicide had taken place on the Appian road, not that he who had defended himself had acted in a manner contrary to the interests of the republic; but as there was violence and treachery in the business, I reserved the charge for trial, I expressed my disapprobation of the business. And if the senate had not been hindered by that frantic tribune from executing its wishes, we should not now have this novel trial. For the senate voted that an extraordinary investigation should take place according to the ancient laws. A division took place, it does not signify on whose motion, for it is not necessary to mention the worthlessness of every one, and so the rest of the authority of the senate was destroyed by this corrupt intercession.

16. "Oh, but Cnæus Pompeius, by his bill, gave his decision both about the fact and about the cause. For he brought in a bill about the homicide which had taken place on the Appian road, in which Publius Clodius was slain." What then did he propose? That an inquiry should be made. What is to be inquired about? Whether it was committed? That is clear. By whom? That is notorious. He saw that a defence as to the law and right could be undertaken, even at the very moment of the confession of the act. But if he had not seen that he who confessed might yet be acquitted, when he saw that we did not confess the fact, he would never have ordered an investigation to take place, nor would he have given you at this trial the power[1] of acquitting as well as

[1] Literally, "this wholesome letter, as well as that melancholy one." The letter A was the "wholesome" letter, being the initial of *absolvo*, I

that of condemning. But it seems to me that Cnæus Pompeius not only delivered no decision at all unfavorable to Milo, but that he also pointed out what you ought to turn your attention to in deciding. For he who did not assign a punishment to the confession, but required a defence of it, he clearly thought that what was inquired into was the cause of the death, and not the mere fact of the death. Now he himself shall tell us whether what he did of his own accord was done out of regard for Publius Clodius, or from a compliance with the times.

17. A most noble man, a bulwark, and in those times, indeed, almost a protector of the senate, the uncle of this our judge, of that most fearless man Marcus Cato, Marcus Drusus, a tribune of the people, was slain in his own house. The people had never any reference made to them in the matter of his death, no investigation was voted by the senate. What great grief was there, as we have heard from our forefathers in this city, when that attack was made by night on Publius Africanus, while sleeping in his own house! Who was there then who did not groan, who did not burn with indignation, that men should not have waited even for the natural and inevitable death of that man whom, if possible, all would have wished to be immortal?

18. Was there then any extraordinary investigation into the death of Africanus[1] voted? Certainly none. Why so? Because the crime of murder is not different when eminent men, or when obscure ones are slain. Let there be a difference between the dignity of the lives of the highest and lowest citizens. If their death be wrought by wickedness, that must be avenged by the same laws and punishments in either case; unless, indeed he be more a parricide who murders a father of consular rank than he who murders one of low degree; or as if the death of Publius Clodius is to be more criminal because he was slain among the monuments of his ancestors, — for this is constantly said by that

acquit; the letter C the melancholy one, being the initial of *condemno*, I condemn.

[1] After the death of Tiberius Gracchus, Publius Æmilianus Africanus Scipio, the conqueror of Carthage and Numantia, was known to be hostile to the agrarian law, and threw every obstacle in the way of it; his enemies gave out that he intended to abrogate it by force. One morning he was found dead in his bed without a wound. The cause and manner of his death were unknown; some said it was natural; some, that he had slain himself; some, that his wife Sempronia, the sister of Gracchus, had strangled him. His slaves, it was said, declared that some strangers had been introduced into the house at the back, who had strangled him, and the triumvir Carbo is generally believed to have been the chief agent in his murder, and is expressly mentioned as the murderer by Cicero, Ep. ad Q. Fr. ii. 3.

party; as if, I suppose, that illustrious Appius Cæcus made that road, not that the nation might have a road to use, but that his own posterity might have a place in which to rob with impunity.

19. Therefore in that same Appian road, when Publius Clodius had slain a most accomplished Roman knight, Marcus Papirius, that crime was not to be punished; for a nobleman among his own family monuments had slain a Roman knight. Now what tragedies does the name of that same Appian road awaken? which, though nothing was said about it formerly, when stained with the murder of an honorable and innocent man, is now incessantly mentioned ever since it has been dyed with the blood of a robber and a parricide. But why do I speak of these things! A slave of Publius Clodius was arrested in the temple of Castor, whom he had placed there to murder Cnæus Pompeius; the dagger was wrested from his hands and he confessed his design; after that Pompeius absented himself from the forum, absented himself from the senate, and from all public places; he defended himself within his own doors and walls, not by the power of the laws and tribunals.

20. Was any motion made? was any extraordinary investigation voted? But if any circumstance, if any man, if any occasion was ever important enough for such a step, certainly all these things were so in the greatest degree in that cause. The assassin had been stationed in the forum, and in the very vestibule of the senate. Death was being prepared for that man on whose life the safety of the senate depended. Moreover, at that crisis of the republic, when, if he alone had died, not only this state, but all the nations in the world would have been ruined, — unless, indeed, the crime was not to be punished because it was not accomplished, just as if the execution of crimes was chastised by the laws, and not the intentions of men, — certainly there was less cause to grieve, as the deed was not accomplished, but certainly not a whit the less cause to punish. How often, O judges, have I myself escaped from the weapons and from the bloody hands of Publius Clodius! But if my good fortune, or that of the republic, had not preserved me from them, who would have proposed any investigation into my death.

21. But it is foolish of us to dare to compare Drusus, Africanus, Pompeius, or ourselves, with Publius Clodius. All these things were endurable. The death of Publius Clodius no one can bear with equanimity. The senate is in mourning; the knights grieve; the whole state is broken down as if with age; the municipalities are in mourning; the colonies are bowed down; the very fields

even regret so beneficent, so useful, so kind-hearted a citizen! That was not the cause, O judges, it was not indeed, why Pompeius thought an investigation ought to be proposed by him; but being a man wise and endowed with lofty and almost divine intellect, he saw many things, — that Clodius was his personal enemy, Milo his intimate friend; he feared that, if he were to rejoice in the common joy of all men, the belief in his reconciliation with Clodius would be weakened. He saw many other things, too, but this most especially, — that in whatever terms of severity he proposed the motion, still you would decide fearlessly. Therefore, he selected the very lights of the most eminent ranks of the state. He did not, indeed, as some are constantly saying, exclude my friends in selecting the tribunal; for neither did that most just man think of this, nor, when he was selecting good men, could he have managed to do so, even had he wished; for my influence would not be limited by my intimacies, which can never be very extensive, because one cannot associate habitually with many people; but, if we have any influence, we have it on this account, because the republic has associated us with the virtuous; and, when he was selecting the most excellent of them, and as he thought that it especially concerned his credit to do so, he was unable to avoid selecting men who were well-disposed towards me.

22. But as for his especially appointing you, O Lucius Domitius, to preside over this investigation, in that he was seeking nothing except justice, dignity, humanity and good faith. He passed a law that it must be a man of consular dignity, because, I suppose, he considered the duty of the men of the highest rank to resist both the fickleness of the multitude and the rashness of the profligate; and of the men of consular rank he selected you above all; for from your earliest youth you had given the most striking proofs how you despised the madness of the people.

23. Wherefore, O judges, that we may at last come to the subject of action and the accusation, if it is neither the case that all avowal of the deed is unprecedented, nor that anything has been determined about our cause by the senate differently to what we could wish; and if the proposer of the law himself, when there was no dispute as to the deed yet thought that there should be a discussion as to the law; and if the judges had been chosen, and a man appointed to preside over the investigation, to decide these matters justly and wisely; it follows, O judges, that you have now nothing else to inquire into but which plotted against the other; and that you may the more easily discern this, attend carefully, I

entreat you, while I briefly explain to you the matter as it occurred.

24. When Publius Clodius had determined to distress the republic by all sorts of wickedness during his prætorship, and saw that the comitia were so delayed the year before, that he would not be able to continue his prætorship many months, as he had no regard to the degree of honor, as others have, but both wished to avoid having Lucius Paullus, a citizen of singular virtue, for his colleague, and also to have an entire year to mangle the republic; on a sudden he abandoned his own year, and transferred himself to the next year, not from any religious scruple, but that he might have, as he said himself, a full and entire year to act as prætor, that is, to overthrow the republic.

25. It occurred to him that his prætorship would be crippled and powerless, if Milo was consul; and, moreover, he saw that he was being made consul with the greatest unanimity of the Roman people. He betook himself to his competitors, but in such a manner that he alone managed the whole election, even against their will, — that he supported on his own shoulders, as he used to say, the whole comitia, — he convoked the tribes, — he interposed, — he erected a new Colline tribe by the enrolment of the most worthless of the citizens. In proportion as the one caused greater confusion, so did the other acquire additional power every day. When the fellow, prepared for every atrocity, saw that a most brave man, his greatest enemy, was a most certain consul, and that that was declared, not only by the conversation of the Roman people, but also by their votes, he began to act openly, and to say without disguise that Milo must be slain.

26. He had brought down from the Apennines rustic and barbarian slaves, whom you saw, with whom he had ravaged the public woods and Etruria. The matter was not concealed at all. In truth, he used to say undisguisedly that the consulship could not be taken from Milo, but that life could. He often hinted as much in the senate; he said it plainly in the public assembly. Besides, when Favonius, a brave man, asked him what he hoped for by giving way to such madness while Milo was alive? he answered him, that in three, or at most in four days, he would be dead. And this saying of his Favonius immediately reported to Marcus Cato, who is here present.

27. In the meantime, as Clodius knew — and it was not hard to know it — that Milo was forced to take a yearly, legitimate, necessary journey on the twentieth of January to Lanuvium to

appoint a priest,[1] because Milo was dictator of Lanuvium, on a sudden he himself left Rome the day before, in order (as was seen by the event) to lay an ambush for Milo in front of his farm; and he departed, so that he was not present at a turbulent assembly in which his madness was greatly missed, and which was held that very day, and from which he never would have been absent, if he had not desired to avail himself of the place and opportunity for a crime.

28. But Milo, as he had been that day in the senate till it was dismissed, came home, changed his shoes and his garments, waited a little, as men do, while his wife was getting ready, and then started at the time when Clodius might have returned, if, indeed, he had been coming to Rome that day. Clodius meets him unencumbered on horseback, with no carriage, with no baggage, with no Greek companions, as he was used to, without his wife, which was scarcely ever the case; while this plotter, who had taken, forsooth, that journey for the express purpose of murder, was driving with his wife in a carriage, in a heavy travelling cloak, with abundant baggage, and a delicate company of women, and maid-servants, and boys. He meets Clodius in front of his farm, about the eleventh hour, or not far from it. Immediately a number of men attack him from the higher ground with missile weapons. The men who are in front kill his driver, and when he had jumped down from his chariot and flung aside his cloak and while he was defending himself with vigorous courage, the men who were with Clodius drew their swords, and some of them ran back towards his chariot in order to attack Milo from behind, and some, because they thought that he was already slain, began to attack his servants who were behind him; and those of the servants who had presence of mind to defend themselves, and were faithful to their master, were some of them slain, and the others, when they saw a fierce battle taking place around the chariot, and as they were prevented from getting near their master so as to succor him, when they heard Clodius himself proclaim that Milo was slain, and they thought that it was really true, they, the servants of Milo, (I am not speaking for the purpose of shifting the guilt on to the shoulders of others, but I am saying what really occurred,) did, without their master either commanding it, or knowing it, or even being present to see it, what every one would have wished his servants to do in a similar case.

29. These things were all done, O judges, just as I have related

[1] It was the priest of Juno Sospita, who was the patroness of Lanuvium.

them. The man who laid the plot was defeated; violence was defeated by violence; or, I should rather say, audacity was crushed by valor. I say nothing about what the republic, nothing about what you, nothing about what all good men gained by the result. I do not desire it to be any advantage to me to hear that he was born with such a destiny that he was unable even to save himself, without at the same time saving the republic and all of you. If he had not a right to do so, then I have nothing which I can urge in his defence. But if both reason has taught this lesson to learned men, and necessity to barbarians, and custom to all nations, and nature itself to the beasts, that they are at all times to repel all violence by whatever means they can from their persons, from their liberties, and from their lives, then you cannot decide this action to have been wrong, without deciding at the same time that all men who fall among thieves must perish, either by their weapons, or by your sentence.

30. And if he had thought that this was the law, it would have been preferable for Milo to offer his throat to Publius Clodius, — which was not attacked by him once only, nor for the first time on that day, — rather than now to be destroyed by you because he did not surrender himself then to be destroyed by him. But if there is no one of you who entertains such an opinion as that, then the question which arises for the consideration of the court is, not whether he was slain or not, which we admit, but whether he was slain legally or illegally, which is an inquiry which has often been instituted in many causes. It is quite plain that a plot was laid; and that is a thing which the senate has decided to be contrary to the laws of the republic. By whom it was laid is a question. And on this point an inquiry has been ordered to be instituted. So the senate has marked its disapproval of the fact, not of the man; and Pompeius has appointed this inquiry into the merits of the case, and not into the fact of its existence.

31. Does then any other point arise for the decision of the court, except this one, — which laid a plot against the other? None whatever. The case comes before you in this way, that if Milo laid a plot against Clodius, then he is not to be let off with impunity. If Clodius laid it against Milo, then we are acquitted from all guilt.

32. How then are we to prove that Clodius laid a plot against Milo? It is quite sufficient in the case of such a wicked, of such an audacious monster as that, to prove that he had great reason to do so; that he had great hopes founded on Milo's death; that

it would have been of the greatest service to him. Therefore, that maxim of Cassius, to see to whose advantage it was, may well have influence in respect of these persons. For although good men cannot be induced to commit crimes by any advantage whatever, wicked men often can by a very trifling one. And, if Milo were slain, Clodius gained this, not only that he should be prætor without having him for a consul, under whom he would not be able to commit any wickedness, but also that he should have those men for consuls while he was prætor, who, if they did not aid him, would at all events connive at all his proceedings to such an extent that he hoped he should be able to escape detection in all the frantic actions which he was contemplating; as they (so he argued to himself) would not, even if they were able to do so, be anxious to check his attempts when they considered that they were under such obligations to him; and on the other hand, if they did wish to do so, perhaps they would hardly be able to crush the audacity of that most wicked man when it got strength by its long continuance. Are you, O judges, the only persons ignorant of all this? Are you living in this city as ignorant of what passes as if you were visitors? Are your ears all abroad, do they keep aloof from all the ordinary topics of conversation of the city, as to what laws (if, indeed they are to be called laws, and not rather firebrands to destroy the city, pestilences to annihilate the republic) that man was intending to impose upon all of us, to brand on our foreheads? Exhibit, I beg you, Sextus Clodius, produce, I beg, that copy of your laws which they say that you saved from your house, and from the middle of the armed band which threatened you by night, and bore aloft, like another palladium, in order, forsooth, to be able to carry that splendid present, that instrument for discharging the duties of the tribuneship, to some one, if you could obtain his election, who would discharge those duties according to your directions. And . . . [he was going to divide the freedom among all the tribes, and by his new law to add all the slaves who were going to be emancipated, but who had not yet received their freedom, so that they might vote equally with the free citizens.] [1]

33. Would he have dared to make mention of this law which Sextus Clodius boasts was devised by him, while Milo was alive, not to say while he was consul? For of all of us —— I cannot venture to say all that I was going to say. But do you consider

[1] The passage in brackets is a very doubtful supplement of Beier: which, however, Orellius prefers to any other.

what enormous faults the law itself must have had, when the mere mention of it, for the purpose of finding fault with it, is so offensive? And he looked at me with the expression of countenance which he was in the habit of putting on when he was threatening everybody with every sort of calamity. That light of the senate-house moves me.[1]

34. What? do you suppose, O Sextus, that I am angry with you; I, whose greatest enemy you have punished with even much greater severity than my humanity could resolve to demand? You cast the bloody carcass of Publius Clodius out of the house, you threw it out into the public street, you left it destitute of all images, of all funeral rites, of all funeral pomp, of all funeral panegyric, half consumed by a lot of miserable logs, to be torn to pieces by the dogs who nightly prowl about the streets. Wherefore, although in so doing you acted most impiously, still you were wreaking all your cruelty on my enemy; though I cannot praise you, I certainly ought not to be angry with you. . . .

35. [I have demonstrated now, O judges, of what great consequence it was to Clodius] that Milo should be slain. Now turn your attention to Milo. What advantage could it be to Milo that Clodius should be slain? What reason was there why Milo, I will not say should do such an action, but should even wish for his death? Oh, Clodius was an obstacle to Milo's hope of obtaining the consulship. But he was obtaining it in spite of him. Ay, I might rather say he was obtaining it all the more because Clodius was opposing him; nor in fact was I a more efficient support to him than Clodius was. The recollection, O judges, of the services which Milo had done to me and to the republic had weight with you. My entreaties and my tears, with which I perceived at that time that you were greatly moved, had weight with you; but still more weight had your own fear of the dangers which were impending. For who of the citizens was there who could turn his eyes to the unrestrained prætorship of Publius Clodius, without feeling the greatest dread of a revolution? and unrestrained you saw that it would be unless you had a consul who had both courage and power to restrain him; and as the whole Roman people saw that Milo alone was that man, who could hesitate by his vote to release himself from fear, and the republic from danger?

36. But now, now that Clodius is removed, Milo has got to labor by more ordinary practices to preserve his dignity. . . . So

[1] Cicero here supposes Sextus Clodius to look menacingly at him in order to check him in his attack on this intended law.

that the death of Clodius is not only no advantage, but is even a positive injury to Milo.

37. "Oh, but his hatred prevailed with him; he slew him in a passion; he slew him because he was his enemy; he acted as the avenger of his own injury; he was exacting atonement to appease his private indignation." But what will you say if these feelings, I do not say existed in a greater degree in Clodius than in Milo, but if they existed in the greatest possible degree in the former, and not at all in the latter? . . . For Clodius was liable to the prosecution of Milo, according to the provisions of the Plotian law, as long as he lived. . . .

38. It remains for me now to urge his natural disposition and his habits of life in the defence of the one, and the very same things as an accusation against the other. Clodius, I suppose, had never done anything by violence; Milo had done everything by violence. What then shall I say, O judges? When, amid the grief of all of you, I departed from the city, was I afraid of the result of a trial? was I not afraid of slaves, and arms and violence? What, I pray you, was the first ground of my restoration, except that I had been unjustly driven out? Clodius, I suppose, had commenced a formal prosecution against me: he had named a sum as damages; he had commenced an action for high treason; and I suppose too, I had cause to fear your decision in a cause which was an unjust one, which was my own private cause, not one which was a most righteous one, and which was, in reality, your cause, and not mine? No — I was unwilling that my fellow-citizens, who had been saved by my prudence and by my own personal danger, should be exposed to the arms of slaves and needy citizens and convicted malefactors. For I saw — I saw, I say, this very Quintus Hortensius, the light and ornament of the republic, almost slain by the hand of slaves, while he was standing by me. In which crowd Caius Vibienus, a senator, a most excellent man, who was with Hortensius, was so maltreated that he lost his life.

39. When, then, was it that that assassin's dagger of his, which he had received from Catiline, rested? It was aimed at us; I would not allow you all to be exposed to it for my sake. It was prepared in treachery for Pompeius. It stained with blood through the murder of Papirius, the very Appian road, the monument of his name; this, this same dagger, after a long interval was again turned against me; lately, as you know, it nearly murdered me close to the palace of Ancus.

40. What is there of Milo's conduct like all this? when all the violence that he has ever displayed has amounted to this, that he wished to prevent Publius Clodius (as he could not be brought to trial) from oppressing the city by violence. And if he wished to put him to death, what great, what repeated, and what splendid opportunities he had of doing so! Might he not have avenged himself without violating the law when he was defending his own house and his household gods from his attacks? might he not have done so when that illustrious citizen and most gallant man, Publius Sextius, his own colleague, was wounded? might he not have done so when that most excellent man, Quintus Fabricius, while carrying a bill for my restoration, was driven away, and when a most cruel slaughter was taking place in the forum? might he not have done so when the house of Lucius Cæcilius, that most upright and fearless prætor, was attacked? might he not have done so on the day on which the law concerning me was passed, and when that vast concourse of people from all parts of Italy, whom a regard for my safety had roused up, would have gladly recognized and adopted as its own the glory of that action? so that, even if Milo had performed it, the whole state would claim the praise of it as belonging to itself?

41. And what a time was it? A most illustrious and fearless consul, Publius Lentulus, an enemy to Clodius, the avenger of his wickedness, the bulwark of the senate, the defender of your inclinations, the patron of that general unanimity, the restorer of my safety; seven prætors, eight tribunes of the people, adversaries of him, defenders of me; Cnæus Pompeius, the prime mover of and chief agent in my return, his open enemy: whose opinion respecting my return, delivered in the most dignified and most complimentary language, the whole senate adopted; he who exhorted the whole Roman people, and, when he passed a decree concerning me at Capua, gave himself the signal to all Italy, which was eager for it, and which was imploring his good faith, to join together for the purpose of restoring me to Rome; in short, universal hatred on the part of all the citizens, was excited against him, while their minds were inflamed with as earnest a regret for me; so that if any one had slain him at that time, people's thoughts would have been, not how to procure impunity for such a man, but how to reward him sufficiently.

42. Nevertheless, Milo restrained himself, and twice summoned Publius Clodius before the court, but never once invited him to a trial of strength in scenes of violence. What do I say?

while Milo was a private individual, and on his trial before the people, on the accusation of Publius Clodius, when an attack was made on Cnæus Pompeius, while speaking in defence of Milo, was there not then not only an admirable opportunity of, but even a reasonable pretext for slaying him? And lately, when Marcus Antonius had inspired all virtuous men with the very greatest hope of safety, and when he, being a most noble young man, had with the greatest gallantry espoused the cause of the republic, and had that beast almost in his toils in spite of his avoiding the snares of the law; what an opportunity, what a time and place was there, O ye immortal gods! And when Clodius had fled and hidden himself in the darkness of the stairs, there was a fine opportunity for Milo to slay him without incurring the slightest odium himself, and to load Antonius at the same time with the greatest glory! What? How repeatedly had he a similar chance in the comitia! when he had broken into the voting booth, and contrived to have swords drawn and stones thrown, and then on a sudden, terrified at the look of Milo, fled towards the Tiber, and you and all virtuous men prayed to heaven that Milo might take it into his head to give full scope to his valor.

43. If then he did not choose to slay him, when he might have done so with the gratitude of every one, is it likely that he should have chosen to do so when some people were sure to complain of it? If he did not venture to do it when he might have done so lawfully, when he had both place and time in his favor, when he might have done so with impunity, can we believe that he did not hesitate to slay him unjustly at a time and place which supplied him with no excuse for the deed, when it was at the hazard of his life? especially, O judges, when the day of contest for the greatest distinction of the state, and the day of the comitia, was at hand. . . .

44. Did Milo then, keeping in view this long hoped-for and wished-for day of the Campus Martius, propose to himself to come to those venerable auspices of the centuries with bloody hands, owning and confessing a wickedness and a crime? How perfectly incredible is such conduct in such a man! At the same time, how undoubted is it in the case of Clodius, who thought that he should be a king as soon as Milo was slain. What shall I say more? This is the very mainspring of audacity, O judges, for who is there who does not know that the greatest temptation of all to do wrong is the hope of impunity? Now, in which of the two did this exist? In Milo? who is even now on his trial for

an action which I contend was an illustrious one, but which was at all events a necessary one; or in Clodius? who had shown such contempt for courts of justice and punishment, that he took no pleasure in anything which was not either impious, from its disregard of the prohibitions of nature, or illegal, from its violation of law.

But what am I arguing about? why do I keep on disputing at greater length? I appeal to you, O Quintus Petillius, a most virtuous and fearless citizen: I call you to witness, O Marcus Cato; whom some heavenly interposition has given me for judges. You have heard from Marcus Favonius, and you heard it too while Clodius was alive, that he, Clodius, had said to him that Milo would die within three days, — and on the third day the deed which he had mentioned was put in execution. When he did not hesitate to reveal what he was thinking of, can you have any doubt what he did?

45. How then was it, that he was so correct in the day? I told you that just now. There was no great difficulty in knowing the regular days of sacrifice for the dictator of Lanuvium. He saw that it was necessary for Milo to go to Lanuvium on the very day in which he did go, — therefore, he anticipated him. But on what day? Why, on the day on which, as I have said before, there was a most furious assembly of the people, stirred up by the tribune of the people whom he had in his pay — a day, and an assembly, and an uproar which he would never have missed if he had not been hastening to some premeditated crime. Therefore, he had not only no reason for going on a journey, but he had even a reason for stopping at home. Milo had no possibility of stopping at home, and he had not only a reason, but a positive necessity for going on a journey. What more? Suppose, while he knew that Milo must go on the road on that day, so, on the other hand, Milo could not even suspect that Clodius would? For, first of all, I ask, how could Milo know it? a question which you cannot ask respecting Clodius. For even if he had not asked any one beyond his own intimate friend Titus Patina, he could have ascertained from him that on that particular day a priest must absolutely be appointed at Lanuvium by Milo as the dictator there. But there were plenty more people from whom he could easily learn that; for instance, all the people of Lanuvium. Of whom did Milo make any inquiry about the return of Clodius? Grant that he did make inquiry; see what large allowances I am making you: grant even that he bribed his slave, as my good

friend Quintus Arrius said. — Read the evidence of your own witnesses.

46. Caius Cassinius Schola, a man of Interamna, gave his evidence, — a most intimate friend of Publius Clodius, and more, a companion of his at the very time; according to whose testimony, Publius Clodius was at Interamna and at Rome at the very same time. Well, he said, that Publius Clodius had intended to remain that day at his Alban villa; but that on a sudden news was brought to him, that Cyrus his architect was dead; and therefore, that he determined to proceed to Rome immediately. Caius Clodius, who was also a companion of Publius Clodius, said the same.

47. Take notice, O judges, what the real effect of this evidence must be. First of all, Milo is certainly acquitted of having set out with the express intention of waylaying Clodius on his road; this must be, since there was apparently no chance whatever of his meeting him. In the next place, (for I see no reason why I should not do something for myself at the same time,) you know, O judges, that there have been men found to say, while urging on this bill against Milo, that the murder was committed by the hand indeed of Milo, but by the plan of some one of more importance than he. Those abject and profligate men, forsooth, pointed me out as a robber and assassin. Now they lie convicted by their own witnesses, who say that Clodius would not have returned to Rome that day if he had not heard the news about Cyrus. I breathed again; I was delivered; I am not any longer afraid of being supposed to have contemplated an action which I could not possibly have suspected.

48. Now I will examine the other point. For this expression occurs in their speech: "Therefore, Clodius never even thought of the plot against Milo, since he intended to remain in his Alban villa." Yes, he meant to remain there, if he did not rather intend to go out and commit a murder. For I see that the messenger who is said to have brought him news of Cyrus's death did not announce that to him, but told him that Milo was at hand. For why should he bring any news about Cyrus, whom Clodius had left at Rome on his deathbed? I was with him; I signed his will as a witness together with Clodius; and he had openly made his will, and had left him and me his heirs. When he had left him the day before, at the third hour, at the very point of death, was news sent express to him the next day, at the tenth hour, that he was at last dead?

49. Well, be it so; what reason had he for hastening to Rome? for starting at nightfall? Why should the fact of his being his heir cause him to make so much haste? In the first place, there was no reason why there should be need of any haste; secondly, even if there was, still what was there which he could obtain that night, but which he would lose if he arrived at Rome early the next morning? And as an arrival in the city by night was rather to be avoided by him than to be desired, so it was just suited for Milo to lie in ambush and wait for him, as he was a plotter of that sort, if he knew that he was likely to come to the city by night. He would have slain him by night, in a place calculated for an ambush and full of robbers; no one would have refused to believe him if he denied it, when now all men wish to save him even when he confesses it. The brunt of the blame would have fallen on the place itself, so well suited to receive and conceal robbers, while neither the voiceless solitude would have informed against, nor the dark night discovered Milo; secondly, the numbers of men who had been insulted by Clodius, or plundered by him, or stripped of all their property by him, many, too, who were in constant fear of such misfortunes, would have fallen under suspicion; in short, the whole of Etruria would have been impeached in people's opinion.

50. And certainly on that day Clodius returning from Aricia, did turn aside to his Alban villa. But although Milo knew that he was at Aricia, still he ought to have suspected that he, even if he was desirous to return to Rome that day, would turn aside to his own villa, the grounds of which skirted the road. Why, then, did he not meet him before, and prevent his going to his villa? nor wait in that place where he would certainly arrive by night?

51. I see that all things up to this point are plain and consistent. That it was even desirable for Milo that Clodius should live; that for Clodius the death of Milo was the most advantageous thing possible, with reference to those objects on which he had set his heart; that he bore him the most bitter hatred, but that Milo had no such feelings toward him; that the one lived in a perpetual round of violence, that the other's habits were limited to repelling it; that Milo had been threatened by him with death, and that his death had been openly predicted by him; that no such expression had ever been heard from Milo; that the day of Milo's journey was well known to Clodius, but that Clodius's return was unknown to Milo; that the journey of the one was inevitable, and that of the other was even inconvenient to him-

self; that the one had openly declared that on that day he should set out from Rome, that the other had concealed the fact of his intending to return on that day; that the one had in no respect whatever changed his intention, that the other had invented a false pretence for changing his mind; that the one, if he were plotting, would naturally wish night to come on when he was near the city, while an arrival at the city by night was to be feared by the other, even if he had no apprehension of danger from this man.

52. Let us now consider this, which is the main point of all; for which of the two the identical spot where they did meet was the best suited for planting an ambush. But is that, O judges, a matter about which one can possibly doubt or think seriously for a moment? In front of Clodius's farm, — that farm on which, on account of those absurd erections and excavations for foundations of his, there were pretty well a thousand vigorous men employed, — on that high and raised ground belonging to his adversary, did Milo think that he should get the better in the contest, and had he with that view selected that spot above all others? Or was he rather waited for in that place by a man who had conceived the idea of attacking, because of the hopes that that particular spot suggested to him? The facts, O judges, speak for themselves; facts, which are always of the greatest weight in a cause. If you were not hearing of this transaction, but were looking at a picture of it, still it would be quite visible which of the two was the plotter, which was thinking no evil, when one of the two was driving in a chariot wrapped up in a mantle, with his wife sitting by his side. It is hard to say which was the greatest hindrance to him, his dress, or his carriage, or his wife. How could a man be less ready for battle than when he was entangled in a mantle as in a net, hampered with a carriage, and fettered as it were by his wife clinging to him? Look, on the other hand, at Clodius, first setting out from his villa; all on a sudden: why? It was evening. Why was he forced to set out at such a time? Going slowly. What was the object of that, especially at that time of night? He turns aside to the villa of Pompeius. To see Pompeius? He knew that he was near Alsium. To see the villa? He had been in it a thousand times. What, then, was his object? Delay, he wanted to waste the time. He did not choose to leave the spot till Milo arrived.

53. Come now, compare the journey of this unencumbered bandit with all the hindrances which beset Milo. Before this

time he always used to travel with his wife; now he was without her. He invariably went in a carriage; now he was on horseback. His train were a lot of Greeklings wherever he was going; even when he was hastening to the camp in Etruria;[1] but this time there were no triflers in his retinue. Milo, who was never in the habit of doing so, did by chance have with him some musical slaves belonging to his wife, and troops of maid-servants. The other man, who was always carrying with him prostitutes, worn-out debauchees, both men and women, this time had no one with him except such a band that you might have thought every one of them picked men. Why, then, was he defeated? Because the traveller is not always murdered by the robber; sometimes the robber is killed by the traveller; because, although Clodius in a state of perfect preparation was attacking men wholly unprepared, still it was the case of a woman falling upon men. And, indeed, Milo was never so utterly unprepared for his violence, as not to be nearly sufficiently prepared. He was always aware how greatly it concerned the interest of Publius Clodius that he should be slain, how greatly he hated him, and how great was his daring. Wherefore, he never exposed his life to danger without some sort of protection and guard, knowing that it was threatened, and that a large price, as it were, was set upon it.

54. Add to this consideration all the chances; add the always uncertain result of a battle, and the common fortune of Mars, who often overthrows the man who is already exulting and stripping his enemy, and strikes him to the ground by some mean agent; add the blundering conduct of a leader who had dined and drank, and who was yawning and drowsy; who, when he had left his enemy cut off in the rear, never thought of his companions on the outskirts of his train; and then when he fell among them inflamed with anger, and despairing of saving the life of their master, he fell on that punishment which the faithful slaves inflicted on him as a retribution for their master's death. Why, then, has Milo emancipated them? He was afraid, I suppose, lest they should give information against him; lest they should be unable to bear pain; lest they should be compelled by tortures to confess that Publius Clodius was slain in the Appian road by the slaves of Milo.

55. What need is there of any torturer? What do you want to know? whether he was slain? He was slain. Whether he was

[1] That is, to Manlius's camp in Etruria at the time of Catiline's conspiracy in which, in all probability, Clodius was implicated.

slain lawfully or unlawfully? That is beyond the province of the torturer. For the rack can only inquire into the fact; it is the bench of judges that must decide on the law.

56. Let us then here confine our attention to what must be investigated in this trial. All that you can want to find out by tortures we admit. But if you prefer asking why he emancipated his slaves, rather than why he gave them inadequate rewards, you are but a bungling hand at finding fault with an enemy. For Marcus Cato, who says everything with great wisdom, and consistency, and courage, said the same thing; and he said, too, in a very turbulent assembly of the people, which, however, was pacified by his authority, that those slaves were worthy not only of liberty, but even of every sort of reward possible, who had defended the life of their master. For what reward can be sufficiently great for such well-affected, such virtuous, such faithful slaves, owing to whom it is that he is still alive? Although even that is not putting it so strongly as to say, that it is owing to those very men that he did not glut the eyes and mind of his most cruel enemy with his blood and wounds. And if he had not emancipated them, then those preservers of their master, those avengers of wickedness, those defenders of their master from death, must have even been surrendered to torture. But in all these misfortunes the most comfortable reflection which Milo has is, that, even if anything should happen to himself, still he has given them the reward which they deserved.

57. But now the examinations which have just been conducted in the hall of liberty, are said to press against Milo. Who are the slaves who have been examined? Do you ask? The slaves of Publius Clodius. Who demanded that they should be examined? Appius. Who produced them? Appius. Where were they brought from? From the house of Appius. O ye good gods, what can be done with more animosity? There is no law which authorizes slaves to be examined as witnesses against their master, except on accusations of impiety, as was the case in the prosecution instituted against Clodius. Clodius has been raised nearly to the gods, more nearly than even when he penetrated into their sanctuary, when an investigation into the circumstances of his death is carried on like one into a profanation of sacred ceremonies. But still, our ancestors did not think it right that slaves should be examined as witnesses against their masters, not because the truth could not be discovered, but because it seemed a scandalous thing to do, and more oppressive to the masters than even death itself.

Well, then, when the slaves of the prosecutor are examined as witnesses against the defendant, can the truth be found out?

58. Come, however, what was the examination; and how was it conducted? Holloa, you Rufio, (that name will do as well as another,) take care you tell the truth. Did Clodius lay a plot against Milo? "He did." He is sure to be crucified for saying so. "Certainly not." He has hopes of obtaining his liberty. What can be more certain than this mode of examination? The men are suddenly carried off to be examined; they are separated from all the rest, and put into cells that no one may be able to speak to them. Then, when they have been kept a hundred days in the power of the prosecutor, they are produced as witnesses by the prosecutor himself. What can be imagined more upright than this sort of examination? What can be more free from all suspicion of corruption?

59. And if you do not yet see with sufficient clearness, (though the transaction is evident of itself by so many and such irresistible arguments and proofs,) that Milo was returning to Rome with a pure and guiltless intention, with no taint of wickedness, under no apprehension, without any consciousness of crime to disquiet him; recollect, I implore you, in the name of the immortal gods, how rapid his speed while returning was; how he entered the forum while the senate-house was all on fire with eagerness; how great was the magnanimity which he displayed; how he looked, and what he said. Nor did he trust himself to the people only, but also to the senate; nor to the senate only, but also to the public guards and their arms; nor to them only, but also to the power of that man to whom the senate had already entrusted[1] the whole republic, all the youth of Italy, and all the arms of the Roman people. And surely he never would have put himself in his power, if he had not been confident in the justice of his cause; especially as he was one who heard everything, and feared great danger, and sus-

[1] The disturbances on the death of Clodius arose to such a height, that the senate at last passed a resolution that Marcus Lepidus the Interrex, assisted by the tribunes of the people and Pompeius, should take care that the republic received no injury. And at last the senate appointed Pompeius consul without a colleague, who immediately published several new laws, and among them the one under which this trial was conducted, (see note on p. 623,) and he now limited the duration of trials, allowing only three days for the examination of witnesses, and on the fourth day the accuser was only allowed two hours to enforce the accusation, and the defendant three hours to speak in his defence. Cœlius endeavored to arrest these laws by his veto as tribune, declaring that they were framed solely with a view to crush Milo, whom Pompeius certainly desired to get rid of; to effect which he even descended to the artifice of pretending to believe that Milo had laid a plot to assassinate him.

pected many things, and even believed some. The power of conscience is very great, O judges, and is of great weight on both sides: so that they fear nothing who have done no wrong, and they, on the other hand, who have done wrong think that punishment is always hanging over them.

60. Nor, indeed, is it without good reason that Milo's cause has always been approved of by the senate. For these wisest of men took into their consideration the whole circumstances of the case; Milo's presence of mind, and vigor in defending himself. Have you forgotten, O judges, when the news of Clodius's death was still recent, the opinions and the language which was held, not only by Milo's enemies, but also by other ignorant people? They said that he would not return to Rome at all. For if he had committed the deed in a passionate and excited mood, so that he had slain his enemy while under the influence of strong hatred, they thought that he would consider the death of Publius Clodius an event of such importance, that he would bear being deprived of his country with equanimity, as he had sated his hatred in the blood of his enemies; or, if he had deliberately intended to deliver his country by the slaughter of Clodius, then they thought that he, as a brave man, would not hesitate, after having brought safety to his country at his own risk, to submit with equanimity to the laws, to carry off with himself everlasting renown, and to leave those things to us to enjoy which he had preserved for us himself.

61. Many also spoke of Catiline and the monsters of his train. "We shall have another Catiline breaking out. He will occupy some strong place; he will make war on his country." Wretched sometimes is the fate of those citizens who have faithfully served the republic! when men not only forget the illustrious exploits which they have performed, but even suspect them of the most nefarious designs! Therefore, all those things were false, which would certainly have turned out true if Milo had committed any act which he could not defend with honor and with truth.

62. What shall I say of the charges which were afterwards heaped upon him? which would have crushed any one who was conscious of even trifling offences. How nobly did he support them! O ye immortal gods, do I say support them? Say rather, how did he despise them, and treat them as nothing! Charges which no guilty man, were he ever so high-minded, and, indeed, no innocent man, unless he were also a most fearless man, could possibly have disregarded. It was said that a vast collection of

shields, swords, bridles, lances, and javelins had been seized. They said that there was no street, no alley in the whole city, in which there was not a house hired for Milo; that arms had been carried down the Tiber to his villa at Oriculum; that his house on the Capitoline Hill was full of shields; that every place was full of firebrands prepared for the burning of the city. These things were not only reported, but were almost believed, and were not rejected till they had been thoroughly investigated. I praised, indeed, the incredible diligence of Cnæus Pompeius; but still I will say what I really think, O judges.

63. Those men are compelled to listen to too many statements; indeed, they cannot do otherwise, who have the whole republic entrusted to them. It was necessary even to listen to that eating-house keeper Licinius, if that was his name, a fellow out of the Circus Maximus, who said that Milo's slaves had got drunk in his house, — that they had confessed to him that they were engaged in a conspiracy to assassinate Cnæus Pompeius, and that he himself was afterwards stabbed by one of them to prevent him from giving information. He went to Pompeius's villa to tell him this. I am sent for among the first. By the advice of his friends, Pompeius reports the affair to the senate. It was impossible for me to be otherwise than frightened almost to death at the bare suspicion of such danger to one who was the protector both of me and of my country: but still I wondered that an eating-house keeper should be at once believed, — that the confession of the slaves should be listened to, and that a wound in the side, which looked like a prick of a needle, should be admitted to be a wound inflicted by a gladiator. But, as I take the fact to have been, Pompeius was rather taking precautions than feeling any actual alarm, guarding not only against those things which it was reasonable to fear, but also against everything which could possibly disquiet you.

64. The house of Caius Cæsar, that most illustrious and gallant man, was besieged, as was reported, during many hours of the night. No one in that frequented part of the city had either seen or heard of any such thing. Still such a report was spread about. I could not possibly suspect Cnæus Pompeius, a man of the most admirable valor, of being timid; and I thought no diligence could be over-strained in a man who had undertaken the management and protection of the whole of the republic. In a very full meeting of the senate, lately held in the Capitol, a senator was found to say that Milo had a weapon about him. He

threw back his garments in that most sacred temple, that, since the life of so good a citizen and so good a man could not procure him credit, the facts themselves might speak for him, while he held his peace.

65. Every word was ascertained to be a false and treacherous invention. And if people are even now afraid of Milo, we are not now under apprehension because of the charge respecting Clodius, but we are shuddering at your suspicions, — at yours, I say, O Cnæus Pompeius, (for I address you yourself, and I speak loudly so that you may be able to hear me). If you are afraid of Milo, — if you believe that he either now cherished wicked designs against your life, or that he ever has entertained such; if the levying of troops throughout Italy, as some of your recruiting-sergeants pretend, — if these arms, — if these cohorts in the Capitol, — if these watchmen, these sentinels, — if this picked body of youths, which is the guard of your person and your house, is all armed against an attack on the part of Milo: and if all these measures have been arranged, and prepared, and aimed against him alone, — then certainly he must be a man of great power, of incredible courage; surely it must be more than the power and resources of one single man which are attributed to him, if the most eminent of our generals is invested with a command, and all Italy is armed against this one man. But who is there who does not understand that all the diseased and feeble parts of the republic were entrusted to you, O Pompeius, that you might heal and strengthen them with your arms? And if an opportunity had been afforded to Milo, he would, doubtless, have proved to you yourself that no man was ever more dear to another than you are to him; that he had never shunned any danger which might be of service in promoting your dignity; that he had often contended against that most foul pest on behalf of your glory; that his conduct in his tribuneship had been entirely regulated by your counsels for the protection of my safety, which was an object very dear to you; that he afterwards had been defended by you when in danger of his life,[1] and had been assisted by you when he was a candidate for the prætorship; and that he had always believed that the two firmest friends whom he had were you and I, — you,

[1] When Clodius was ædile, he instituted a prosecution against Milo for violence. Pompeius, Crassus, and Cicero appeared for him; and though Clodius's mob raised a great uproar, and endeavored to prevent Pompeius from being heard, he made a long speech, lasting three hours, in his defence. The trial was adjourned from February till May, and does not appear to have ever been brought to a regular termination.

as shown by the kindness of your behavior to him, and I, secured to him by the services which he himself had done me. And if he could not convince you of this, — if that suspicion had sunk so deep in your mind that it could not possibly be eradicated; if, in short, Italy was never to have any rest from those levies, nor the city from arms, till Milo was ruined, — then no doubt he, without hesitation, would have departed from his country, a man born to make such sacrifices and accustomed to make them; but still he would have cited you, O Magnus, as a witness in his favor, as he now does.

66. See, now, how various and changeable is the course of human life, — how fickle and full of revolutions is fortune; what instances of perfidy are seen in friends, how they dissemble and suit their behavior to the occasion; when dangers beset one, how one's nearest connections fly off, and what cowardice they show. The time will come, ay, will most certainly come, — that day will surely dawn some time or other, when you, though your affairs are all, as I trust they will be, in a really sound condition, though they may, perhaps, wear an altered appearance in consequence of some commotion of the times, such as we are all liable to, (and how constantly such things happen we may know from experience,) — when you, I say, may be in need of the goodwill of one who is most deeply attached to you, and the good faith of a man of the greatest weight and dignity, and the magnanimity of the very bravest man that ever lived in the world. Although, who would believe that Cnæus Pompeius, a man most thoroughly versed in public law, in the usages of our ancestors, and in all the affairs of the republic, after the senate has entrusted to him the charge of taking care "that the republic suffered no injury," by which one line the consuls have always been sufficiently armed, even though no warlike weapons were given to them, — that he, I say, after having had an army and a levy of troops given to him, would wait for a legal decision to repress the designs of that man who was seeking by violence to abolish the courts of justice themselves?

67. It was sufficiently decided by Pompeius, quite sufficiently, that all those charges were falsely brought against Milo; when he passed a law by which, as I conceive, he was bound to be acquitted by you, — at all events, as all men allow, might legally be acquitted. But when he sits in that place, surrounded by all those bands of public guards, he declares plainly enough that he is not striking terror into you, (for what could be less worthy

of him than to condemn a man whom he himself might punish if guilty, both by his own authority and in strict accordance with the precedents of our ancestors?) but that he keeps them about him for the sake of protection; that you may be aware that it is allowed to you to decide with freedom according to your own opinions, in contradiction to that assembly of the people which was held yesterday.

68. Nor, O judges, am I at all moved by the accusation respecting Clodius. Nor am I so insane, and so ignorant of, and experienced in, your feelings, as not to be aware what your opinions are about the death of Clodius, concerning which, if I were unwilling to do away with the accusation in the manner in which I have done away with it, still I assert that it would have been lawful for Milo to proclaim openly, with a false but glorious boast, "I have slain, I have slain, not Spurius Mælius, who fell under the suspicion of aiming at kingly power by lowering the price of corn, and by squandering his own family estate, because by that conduct he was thought to be paying too much court to the common people; not Tiberius Gracchus, who, out of a seditious spirit, abrogated the magistracy of his own colleague; whose slayers have filled the whole world with the renown of their name; but him" (for he would venture to name him when he had delivered his country at his own risk) "who was detected in the most infamous adultery in the most sacred shrine, by most noble women; him, by the execution of whom the senate has repeatedly resolved that solemn religious observances required to be propitiated; him whom Lucius Lucullus, when he was examined on the point, declared on his oath that he had detected in committing unhallowed incest with his own sister; him, who by means of armed bands of slaves drove from his country that citizen whom the senate, whom the Roman people, whom all nations had declared to be the savior of the city and of the lives of all the citizens; him, who gave kingdoms, took them away, and distributed the whole world to whomsoever he pleased; him who, after having committed numberless murders in the forum, drove a citizen of the most extraordinary virtue and glory to his own house by violence and by arms; him, to whom nothing was ever too impious to be done, whether it was a deed of atrocity or of lust; him, who burnt the temple of the nymphs, in order to extinguish the public record of the census which was committed to the public registers; lastly, him who acknowledged no law, no civil rights, no boundaries to any man's possessions, — who sought to obtain

other people's estates, not by actions at law and false accusations, not by unjust claims and false oaths, but by camps, by an army, by regular standards and all the pomp of war, — who, by means of arms and soldiers, endeavored to drive from their possessions, not only the Etrurians, for he thoroughly despised them, but even this Publius Varius, that most gallant man and most virtuous citizen, one of our judges, — who went into many other people's villas and grounds with architects and surveyors, who limited his hopes of acquiring possessions by Janiculum and the Alps; him who, when he was unable to prevail on an estimable and gallant Roman knight, Marcus Paconius, to sell him his villa on the Prelian Lake, suddenly conveyed timber, and lime, and mortar, and tools in barques to the island, and while the owner of the island was looking at him from the opposite bank, did not hesitate to build a house on another man's land; who said to Titus Furfanius — O ye immortal gods, what a man! (for why should I mention that insignificant woman, Scantia, or that youth Aponius, both of whom he threatened with death if they did not abandon to him the possession of their villas?) but he dared to say to Furfanius, that if he did not give him as much money as he demanded, he would carry a dead body into his house, and so raise a storm of unpopularity against him; who turned his brother Appius, a man connected with me by the most faithful friendship, while he was absent, out of the possession of his farm; who determined to run a wall across the vestibule of his sister's house in such a manner, and to draw the line of foundation in such a direction, as not only to deprive his sister of her vestibule, but of all access to her house, and of her own threshold."

69. Although all these things appeared such as might be endured, — although he attacked with equal fury the republic, and private individuals, and men who were at a distance, and men who were near, people who had no connection with him, and his own relations; yet somehow or other the incredible endurance of the state had by long use grown hardened and callous. But as for the things which were at hand, and were impending over you, in what manner was it possible for you either to avert them or to bear them? If he had once obtained real power, — I say nothing of our allies, of foreign nations, and kings, and tetrarchs; for you would have prayed that he might turn himself against them rather than against your possessions, your houses, and your money: money do I say? your children rather, — I solemnly swear he would never have restrained himself from your children and from your wives. Do

you think that these things are inventions of mine? They are evident; they are notorious to every one; they are proved. Is it an invention of mine that he was about to enlist an army of slaves in the city, by whose instrumentality he might take possession of the whole republic, and of the private fortune of every one?

70. Wherefore, if Titus Annius, holding in his hand a bloody sword, had cried out, "Come hither, I beg of you, and listen to me, O citizens: I have slain Publius Clodius; with this sword and with this right hand I have turned aside from your necks the frenzied attacks of that man whom we were unable to restrain by any laws, or by any judicial proceedings whatever; by my single efforts has it been brought to pass that right, and equity, and laws, and liberty, and modesty, and chastity remain in this city;" would there in truth have been any reason to fear in what manner the city would receive this announcement? For now, as it is, who is there who does not approve of what has been done? who does not praise it? who does not both say and feel that of all men to whom recollection can reach back, Titus Annius has done the republic the greatest service; that of all men he has diffused the greatest joy among the Roman people, and over the whole of Italy, and throughout all nations? I cannot form a conception of what would have been the old-fashioned joy of the Roman people. Already our age has seen many, and those most illustrious victories, won by consummate generals; but not one of them has brought with it a joy that either lasted so long or that was so excessive while it did last.

71. Commit this fact to memory, O judges. I trust that you and your children will see many happy days in the republic. On every such occasion these will always be your feelings, — that if Publius Clodius had been alive, you never would have seen one of them. We have been led now to conceive the greatest, and, as I feel sure, the best-founded hopes, that this very day, this most admirable man being made our consul, when the licentiousness of men is checked, their evil passions put down, the laws and courts of justice reëstablished on a firm footing, will be a salutary day for the republic. Is there, then, any one so insane as to think that he could have obtained all this while Publius Clodius was alive? What? why, what power of perpetual possession could you have had even in those things which you possess as your private property and in the strictest sense your own, while that frenzied man held the reins of government?

72. I have no fear, O judges, lest it should seem that, because I am inflamed with hatred against him, on account of my own personal enmity to the man, I am vomiting forth these charges against him with more zeal than truth. In truth, though it is natural that that should be an especial stimulus to me, yet he was so completely the common enemy of all men, that my own hatred only bore about its fair proportion to the general detestation with which he was regarded. It cannot be expressed, O judges, it cannot even be imagined, how much wickedness, how much mischief there was in that man.

73. Moreover, attend to me with this idea, O judges. This investigation relates to the death of Publius Clodius. Imagine in your minds, — for our thoughts are free, and contemplate whatever they choose in such a manner that we do discern those things which we think we see; — place, therefore, before your mind's eye the image of this my condition; if I am able to induce you to acquit Milo, but still only on condition of Publius Clodius being restored to life. What fear is that that you show by your countenances? How would he affect you if alive, when even now that he is dead he has so agitated you by the bare thought of him? . . . Ought, then, the slayer of this man, if any such slayer there be, to have any reason, while confessing the deed, to fear punishment at the hand of those men whom he delivered by the deed?

74. Grecian nations give the honors of the gods to those men who have slain tyrants. What have I not seen at Athens? what in the other cities of Greece? What divine honors have I not seen paid to such men? What odes, what songs have I not heard in their praise? They are almost consecrated to immortality in the memories and worship of men. And will you not only abstain from conferring any honors on the savior of so great a people, and the avenger of such enormous wickedness, but will you even allow him to be borne off for punishment? He would confess, — I say, if he had done it, he would confess with a high and willing spirit that he had done it for the sake of the general liberty; a thing which would certainly deserve not only to be confessed by him, but even to be boasted of.

75. In truth, if he does not deny an act from which he seeks no advantage beyond being pardoned for having done it, would he hesitate to avow an action for which he would be entitled to claim rewards? Unless indeed he thinks it more pleasing to you to look upon him as having been the defender of his own life, rather than of you: especially as from that confession, if you

were to choose to be grateful, he would reap the very highest honors. . . .

76. It behooves a grateful people to reward those citizens who have deserved well of the republic; it is the part of a brave man, not to be so moved even by execution itself, as to repent of having acted bravely. Wherefore, Titus Annius may well make the same confession which Ahala made, which Nasica, which Opimius, which Marius, which we ourselves have made; and then, if the republic were grateful, he would rejoice; if ungrateful, then, though under the pressure of heavy misfortune, he would still be supported by his own conscience.

77. But, O judges, the fortune of the Roman people, and your felicity, and the immortal gods, all think that they are entitled to your gratitude for this service which has been thus done to you. Nor, indeed, can any one think otherwise except it be a man who thinks that there is no such thing at all as any divine power of authority — a man who is neither moved by the vastness of your empire, nor by that sun above us, nor by the motions of heaven and of the stars, nor by the vicissitudes and regular order of things, nor (and that is the greatest thing of all) by the wisdom of our ancestors; who both themselves cultivated with the most holy reverence the sacred rites and religious ceremonies and auspices, and also handed them down to us their posterity to be so cultivated by us.

78. There is, there is indeed, such a heavenly power. It is not the truth, that in these bodies and in this feebleness of ours there is something which is vigorous and endued with feeling, and nothing which is so in this vast and beautiful movement of nature. Unless perhaps some people think that there is no such thing in existence because it is not apparent, nor visible: just as if we were able to see our own mind, — that by which we are wise, by which we have foresight, by which we do and say these very things which we are doing and saying; or as if we could plainly feel what sort of thing it is, or where it is. That divine power, that very same divine power which has often brought incredible prosperity and power to this city, has extinguished and destroyed this mischief; by first of all inspiring it with the idea of venturing to irritate by violence and to attack with the sword the bravest of men, and so leading it on to be defeated by the man whom if it had only been able to defeat it would have enjoyed endless licence and impunity. That result was brought about, O judges, not by human wisdom, nor even by any moderate degree of care on the part of

the immortal gods. In truth, those very holy places themselves which beheld that monster fall, appear to have been moved themselves, and to have asserted their rights over him.

79. I implore you, I call you to witness, — you, I say, O ye Alban hills and groves, and you, O ye altars of the Albans, now overthrown, but nevertheless partners of and equals in honor with the sacred rites of the Roman people, — ye, whom that man with headlong insanity, having cut down and destroyed the most holy groves, had overwhelmed with his insane masses of buildings; it was your power then that prevailed, it was the divinity of your altars, the religious reverence due to you, and which he had profaned by every sort of wickedness, that prevailed; and you, too, O sacred Jupiter of Latium, whose lakes and groves and boundaries he had constantly polluted with every sort of abominable wickedness and debauchery, you at last, from your high and holy mountain, opened your eyes for the purpose of punishing him; it is to you, to all of you, that those punishments, late indeed, but still just and well deserved, have been made an atonement for his wickedness.

80. Unless, perchance, we are to say that it was by accident that it happened that it was before the very shrine of the Good Goddess which is in the farm of Titus Sextus Gallius, a most honorable and accomplished young man, — before the Good Goddess herself, I say, that when he had begun the battle, he received that first wound under which he gave up that foul soul of his; so that he did not seem to have been acquitted in that iniquitous trial, but only to have been reserved for this conspicuous punishment.

81. Nor, indeed, did that same anger of the gods abstain from inflicting the very same insanity on his satellites, so that without the images of his ancestors, without any funeral song or funeral games, without any obsequies, any lamentation, or any panegyric, — without, in short, any funeral at all, smeared over with gore and mud, and deprived even of the honors which are paid to every one on that last day, and which even enemies are wont to allow to a man, he was cast out in the street half burnt. It was not right, I suppose, for the effigies of most illustrious men to confer any honor on that most foul parricide; nor was there any place in which it was more seemly that his corpse should be ill-treated than that where his life had been condemned.

82. I swear to you, the fortune of the Roman people appeared to me hard and cruel, while it for so many years beheld and endured that man triumphing over the republic. He had polluted the

holiest religious observances with his debauchery; he had broken the most authoritative decrees of the senate; he had openly bought himself from the judges with money; he had harassed the senate in his tribuneship; he had rescinded acts which had been passed for the sake of the safety of the republic, by the consent of all orders of the state; he had driven me from my country; he had plundered my property; he had burnt my house; he had ill-treated my children and my wife; he had declared a wicked war against Cnæus Pompeius; he had made slaughter of magistrates and private individuals; he had burnt the house of my brother; he had laid waste Etruria; he had driven numbers of men from their homes and their professions. He kept pursuing and oppressing men; the whole state, all Italy, all the provinces, all foreign kingdoms could not contain his frenzy. Laws were already being drawn up in his house which were to hand us over to the power of our slaves. There was nothing belonging to any one, which he had taken a fancy to, which he did not think would become his in the course of this year. No one was an obstacle to his expectations except Milo; the very man who was most able to be an obstacle to them he thought when he returned again would be reconciled and, as it were, bound to him. The power of Cæsar, he said, was all his own. The inclinations of all good men he had treated with contempt, while accomplishing my ruin. Milo alone weighed on his mind.

83. On this the immortal gods, as I have said before, put into the head of that abandoned and frantic man the idea of laying an ambush for Milo. That pest was not to perish any other way; the republic would never have chastened him by her laws. The senate, I suppose, would have been able to restrain him when prætor. Why, it had not been able to do anything when it tried to restrain him while a private individual. Would the consuls have been vigorous in bridling the prætor? In the first place, if Milo had been slain, he would have had his own consuls. Secondly, what consul would have behaved fearlessly against him as prætor, who remembered that he, when tribune, had offered the most cruel injuries to the virtue of the consuls? He would have oppressed everything; he would have taken possession and held possession of everything. By a new law, the draught of which was found in his house, with the rest of the Clodian laws, he would have made all our slaves his own freedmen. Lastly, if the immortal gods had not inspired him with such ideas that he, an effeminate creature attempted to slay a most gallant man, you

would have no republic at all this day. Would that man when prætor, much more when consul, provided only that these temples and these walls could have stood so long if he had been alive, and could have remained till his consulship; would he, I say, if alive, have done no harm, when even after he was dead he burned the senate-house, one of his satellites, Sextus Clodius, being the ring-leader in the tumult? What more miserable, more grievous, more bitter sight have we ever seen than that? that that temple of sanctity, of honor, of wisdom, of the public council, the head of the city, the altar of the allies, the harbor of all nations, the abode granted by the universal Roman people to one of the orders of the state, should be burnt, profaned and destroyed?[1] and that that should be done, not by an ignorant mob, although that would have been a miserable thing, but by one single person? who, if he dared so much in his character of burner of a dead man, what would he not have done as a standard-bearer of a living one? He selected the senate-house, of all the places in the city, to throw him down in, in order that when dead he might burn what he had overturned while alive.

84. And are there men, then, who complain of what took place in the Appian road, and say nothing of what happened in the senate-house? and who think that the forum could have been defended from him when alive, whose very corpse the senate-house was unable to resist? Arouse the man himself; resuscitate him, if you can, from the shades below. Will you be able to check his violence when alive, when you were hardly able to support his fury while he lies unburied? unless, indeed, you did support the sight of those men who ran with firebrands to the senate-house, with scythes to the temple of Castor, and who ranged over the whole forum sword in hand. You saw the Roman people slaughtered, you saw the assembly disturbed by the drawn swords, while Marcus Coilius, a tribune of the people, was listened to in silence, a man of the greatest courage in the affairs of state, of the greatest firmness in any cause which he undertook, wholly devoted to the

[1] When Clodius was killed, his slaves fled, and left his dead body in the road; and it was brought to Rome the next day by Sextus Tedius, a senator, who was passing by and saw it; and then it was exposed to the view of the populace of the city. The next day the mob, headed by Sextus Clodius, carried the body naked, so as to show his wounds, into the forum, and placed it on the rostra; and then the tribunes harangued the people on the subject, and wrought them up to such a pitch of excitement, that, snatching up the body, they carried it into the senate-house, and tearing up the benches and tables, dressed up a funeral pile on the spot, and, together with the body, burnt the senate-house itself, with the Basilica Porcia which joined it.

service of the virtuous part of the citizens, and to the authority of the senate, and in this — shall I say unpopularity, or misfortune of Milo's? behaving with singular, and god-like, and incredible good faith.

85. But I have said enough about the cause; and, perhaps too much that was foreign to the cause. What remains, except for me to pray and entreat you, O judges, to show that mercy to a most gallant man, which he himself does not implore; but which I, even against his will, implore and demand in his behalf? . . .

* * * * * * *

93. Shall this man, born for his country, die in any other land except his country? or, as it may perchance turn out, for his country? Will you preserve the monuments of this man's courage, and yet allow no sepulchre containing his body to exist in Italy? Will any one by his vote banish this man from this city, when all other cities will gladly invite him to them if he is driven out from among you? O happy will that land be which shall receive him! Ungrateful will this land be if it banishes him; miserable if it loses him.

94. However, I must make an end. Nor, indeed, can I speak any longer for weeping; and this man forbids me to defend him by tears. I pray and entreat you, O judges, when you are giving your votes, to dare to decide as you think just. And believe me that man [1] will be sure greatly to approve of your virtue, and justice, and good faith; who, in selecting the judges, selected all the best, and wisest, and most fearless men whom he could find.[2]

[1] Cnæus Pompeius.

[2] Milo, as has been said before, was convicted by a majority of thirty-eight to thirteen, though Cato voted openly for his acquittal. He went into exile to Marseilles. Some years afterwards, A.U.C. 706, Cœlius, when prætor, recalled him from banishment, and endeavored to raise some public commotion in favor of Pompey, between whom and Cæsar (who was in his second consulship) the civil war was just breaking out. But he and Cœlius were both killed by the soldiers with whom they were tampering.

SECTION 5. GERMANIC

SECTION 5. FORMULÆ LITURGICÆ IN USE AT ORDEALS[1]

A. The Judgment of the Glowing Iron

After the accusation has been lawfully made, and three days have been passed in fasting and prayer, the priest, clad in his sacred vestments with the exception of his outside garment, shall take with a tongs the iron placed before the altar; and, singing the hymn of the three youths, namely, "Bless him all his works," he shall bear it to the fire, and shall say this prayer over the place where fire is to carry out the judgment: "Bless, O lord God, this place, that there may be for us in it sanctity, chastity, virtue and victory, and sanctimony, humility, goodness, gentleness and plenitude of law, and obedience to God the Father and the Son and the Holy Ghost." — After this, the iron shall be placed in the fire and shall be sprinkled with holy water; and while it is heating, he shall celebrate mass. But when the priest shall have taken the Eucharist, he shall adjure the man who is to be tried . . . and shall cause him to take the communion, — Then the priest shall sprinkle holy water above the iron and shall say: "The blessing of God the Father, the Son, and the Holy Ghost descend upon this iron for the discerning of the right judgment of God." And straightway the accused shall carry the iron to a distance of nine feet. Finally his hand shall be covered under seal for three days, and if festering blood be found in the track of the iron, he shall be judged guilty. But if, however, he shall go forth uninjured, praise shall be rendered to God.

B. Judgment of the Ploughshares

Lord God omnipotent . . . we invoke Thee, and, as suppliants, exhort Thy majesty, that in this judgment and test Thou will'st order to be of no avail all the wiles of diabolical fraud and ingenuity, the incantations either of men or of women, also the properties of herbs; so that to all those standing around it may be apparent, that Thou art just and lovest justice, and that there is none who may resist Thy majesty. And so O Lord, Ruler of

[1] [Reprinted from ERNEST F. HENDERSON'S "Select Documents of the Middle Ages," London, G. Bell & Sons, Ltd., 1912, with the consent of the publisher and The Macmillan Company, New York. Translated from *Gengler:* "Germanische Rechtsdenkmäler," pp. 759–765; also published by *de Rozière*, Recueil II., 770–884.]

the heavens and the earth, creator of the waters, king of thy whole creation, in Thy holy name and strength we bless these ploughshares, that they may render a true judgment; so that if so be that that man is innocent of the charge in this matter which we are discussing and treating of amongst us, who walks over them with naked feet: thou, O omnipotent God, as thou didst deliver the three youths from the fiery furnace, and Susanna from the false charge, and Daniel from the den of lions, — so thou may'st see fit, by Thy potent strength, to preserve the feet of the innocent safe and uninjured. If, moreover, that man be guilty in the aforesaid matter; and, the devil persuading, shall have dared to tempt Thy power, and shall walk over them: do Thou, who art just and a Judge, make a manifest burn to appear on his feet, to Thy honour and praise and glory; to the constancy and confidence in Thy name, moreover, of us thy servants; to the confusion and repentance of their sins of the perfidious and the blind; so that, against their will, they may perceive, what willingly they would not, — that Thou, living and reigning from ages to ages, art the judge of the living and the dead. Amen.

C. The Judgment of Boiling Water

Having performed the mass the priest shall descend to the place appointed, where the trial itself shall be gone through with; he shall carry with him the book of the gospels and a cross, and shall chant a moderate litany; and when he shall have completed that litany, he shall exorcize and bless that water before it boils. — After this he shall divest him (the accused) of his garments, and shall clothe him or them with clean vestments of the church — that is, with the garment of an exorcist or of a deacon — and shall cause him or them to kiss the gospel and the cross of Christ; and he shall sprinkle over them some of the water itself; and to those who are about to go into the Judgment of God, to all of them, he shall give to drink of that same holy water. And when he shall have given it, moreover, he shall say to each one: "I have given this water to thee or to you for a sign to-day." Then pieces of wood shall be placed under the cauldron, and the priest shall say . . . prayers when the water itself shall have begun to grow warm. — And he who puts his hand in the water for the trial itself, shall say the Lord's prayer, and shall sign himself with the sign of the cross; and that boiling water shall hastily be put down near the fire, and the judge shall suspend that stone, bound to

that measure, within that same water in the accustomed way; and thus he who enters to be tried by the judgment shall extract it thence in the name of God himself. Afterwards, with great diligence, his hand shall thus be wrapped up, signed with the seal of the judge, until the third day; when it shall be viewed and judged of by suitable men.

D. Test of the Cold Water

Consecration to be said over the man. May omnipotent God, who did order baptism to be made by water, and did grant remission of sins to men through baptism: may He, through His mercy, decree a right judgment through that water. If, namely, thou art guilty in that matter, may the water which received thee in baptism not receive thee now; if, however, thou art innocent, may the water which received thee in baptism receive thee now. Through Christ our Lord.

Afterwards he shall exorcise the water thus: I adjure thee, water, in the name of the Father Almighty, who did create thee in the beginning, who also did order thee to be separated from the waters above, . . . that in no manner thou receive this man, if he be in any way guilty of the charge that is brought against him; by deed, namely, or by consent, or by knowledge, or in any way: but make him to swim above thee. And may no process be employed against thee, and no magic which may be able to conceal that (fact of his guilt).

E. Judgment of the Morsel

(*Prayer.*) Holy Father, omnipotent, eternal God, maker of all things visible and of all things spiritual; who dost look into secret places, and dost know all things; who dost search the hearts of men, and dost rule as God, I pray Thee, hear the words of my prayer: that whoever has committed or carried out or consented to that theft, — that bread and cheese may not be able to pass through his throat.

(*Exorcism.*) "I exorcize thee, most unclean dragon, ancient serpent, dark night, through the word of truth and the sign of light, through our Lord Jesus Christ the immaculate Lamb generated by the Most High, conceived of the Holy Spirit, born of the Virgin Mary — whose coming Gabriel the archangel did announce; whom seeing, John did call out: this is the living and true Son of

God — that in no wise may'st thou permit that man to eat this bread and cheese, who has committed this theft or consented to it or advised it. Adjured through Him who is to come to judge the quick and the dead, do thou close his throat with a band, not, however, unto death."

And thou shalt repeat those prayers three times. And, before thou sayest those prayers, thou should'st write on the bread itself the Lord's prayer. And of that bread thou should'st weigh out ten denars weight, and of the cheese likewise. And thou should'st place the bread and the cheese at the same time in his mouth, and make two crosses of poplar wood, and put one under his right foot; and the other cross the priest shall hold with his hand above his (the accused's, head, and shall throw above his head that theft written on a tablet. And when thou dost place that bread in his mouth, thou should'st say the following conjuration:

(*Conjuration.*) I conjure thee, O man, through the Father and the Son and the Holy Spirit, and through the twenty-four elders who daily sound praises before God, and through the twelve patriarchs, through the twelve prophets, and through the twelve apostles, and the evangelists, through the martyrs, through the confessors, through the virgins, and through all the saints, and through our Redeemer, our Lord Jesus Christ, who for our salvation and for our sins, did suffer His hands to be affixed to the cross: that if thou werst a partner in this theft, or did'st know of it, or have any fault in it, that bread and cheese may not pass thy gullet and throat: but that thou may'st tremble like an aspen-leaf, amen; and not have rest, O man, until thou dost vomit it forth with blood, if thou hast committed aught in the matter of the aforesaid theft. Through Him who liveth, etc.

F. Judgment with the Psalter

One piece of wood shall be made with a button on top, and shall be put in a psalter above this verse: "Thou art just O Lord and righteous are Thy judgments," and the psalter being closed shall be strongly pressed, the button projecting. Another piece of wood also shall be made with a hole in it, in which the button of the former piece shall be placed so that the psalter hangs from it and can be turned. Let two persons, moreover, hold the wood, the psalter hanging in the middle; and let him who is suspected be placed before them. And one of those who holds the psalter

shall say to the other, thrice, as follows: "He has this thing" (*i.e.* the thing stolen). The other shall reply thrice: "He has it not." Then the priest shall say: "This He will deign to make manifest unto us, by whose judgment are ruled things terrestrial and things celestial. Thou art just, O Lord, and righteous are Thy judgments. Turn away the evils of my enemies, and destroy them with Thy truth."

(*Prayer.*) Omnipotent everlasting God, who did'st create all things from nothing, and did'st form man from the clay of the earth, we pray thee as suppliants through the intercession of Mary the most holy mother of God . . . that Thou do make trial for us concerning this matter about which we are uncertain: so that if so be that this man is guiltless, that book which we hold in our hands shall (in revolving) follow the ordinary course of the sun; but if he be guilty that book shall move backwards.

Chapter XXIV

DOCUMENTS

Section 1. EGYPTIAN

NO 1. THE TESTAMENTARY ENACTMENT OF AN UNKNOWN OFFICIAL, ESTABLISHING THE ENDOWMENT OF HIS TOMB BY THE PYRAMID OF KHAFRE[1]

Introduction

1. . . . while he was alive upon his two feet, even the sole companion, lord of Nekhen, member of the king's court every day . . . local governor of "Praise-of-Horus-First-of-Heaven," [2] . . . these mortuary priests forever [3] . . . .[4]

Endowment is Entailed

2. . . . This is the [dec]ree which I made concerning it: I have not empowered . . . any of [my brothers], my sisters, or my daughter's children, inferior mortuary priests, or assistant mortuary priests, [to take lands,] people, or anything which I have conveyed to them, for making mortuary offerings to me therewith, whether their man-servant [or their maid-servant], their brothers or their sisters, save to make mortuary offerings [to me therewith, in the cemetery in] my eternal tomb which is at the pyramid, "Great-is-

[1] [Reprinted, by permission, from "Ancient Records of Egypt," Vol. I, p. 97 *seq.*, by James H. Breasted, University of Chicago Press, 1906.]

As a revelation of the legal organization of this remote age [Fourth Dynasty — 2900–2750 B.C.] this document is of great interest. Economically it is of importance to note that the king gives whole towns as mortuary endowment, to keep the tomb of the deceased constantly supplied with offerings.

Stela in Cairo (No. 1432); published by *Brugsch*, "Thesaurus," V, 1210 ff.; *Sethe*, "Urkunden," I, 11–15 (collated with Berlin squeeze, No. 1597).

[2] Name of a vineyard estate founded by Zoser of the Third Dynasty; see *Sethe*, in Garstang's "Bet-Khallaf," 21. I have omitted before this title a repetition of titles already mentioned.

[3] Probably so rather than "*endowment.*"

[4] Probably a lacuna of more than one line.

Khafre;" according to the portion of lands, people, and [everything, which I have conveyed to them, for making mortuary offerings to me] therewith.

* * * * * * *

Line of Entailment

3. I have not empowered any mortuary priest of the endowment, to give the lands, people or [anything which I have conveyed to them, for making mortuary offerings to me] therewith, in payment to any person; or to give as property to any person, except that [they] shall give [it to their children], entitled to the division of it with any mortuary priest among these mortuary priests.[1]

Violation of Endowment

4. Whatsoever mortuary priest of the endowment shall violate, . . . of my mortuary offerings, which the king gave to honor me, the portion in his possession shall be taken from him . . . .

Endowment not Involved in Suits of Priests

5. Whatsoever mortuary priest of the endowment shall institute legal proceedings against his fellow, and he shall make a writ of his claim against the mortuary priest, by which [he (the defendant?) forfeits the portion] in his possession; the lands, people and everything shall be taken from him, which I gave to him for making mortuary offerings to me therewith . . . therewith. It shall be conveyed back to him because of not instituting proceedings before the officials, [concerning the lands, people and everything, which I conveyed] to the mortuary priests of the endowment, for making mortuary offerings to me therewith, in my eternal tomb, which is in the cemetery at [the pyramid: "Great-is-Khafre."]

Transfer of Priests to Other Service

6. Whatsoever mortuary priest of the endowment shall go forth to other service, in the presence of the official, . . . the officials, he shall go forth to other service and the portion on his

[1] Not all their children were entitled to a share in the division, but only those who became mortuary priests; hence the document distinguishes particularly those "*entitled to (lit. belonging to) the division of it (the property) with any given mortuary priest of these mortuary priests*" (viz., those endowed by this document).

possession shall revert to the (priestly) order to which he belonged. . . . of lands, people and everything, which I conveyed [to] them, for making mortuary offerings to me therewith, in my tomb which is in [the cemetery at the pyramid: "Great-is-Khafre"]; he shall go forth with his meat.

Land given by King

7. As for this field, which the king gave to me, to honor me . . . for making mortuary offerings to me therewith in the cemetery.

Alienation of Endowment

8. As for whatsoever shall be paid out, of that which I gave to them, [I will enter into judgment with them in the place] wherein judgment is had. The portion which remains afterward, shall belong, by tenths, to these (priestly) orders to [whom] I have conveyed this . . . [the portion] which remains, for making mortuary offerings to me therewith, in the cemetery in my eternal tomb, which is at [the pyramid: "Great]-is-Khafre."

Towns of the Endowment

9. As for the towns of the (mortuary) endowment, which the king gave to me, to honor me, which are maintained for my mortuary offerings, according to the list . . . forever, wherewith mortuary offerings are made to me, in my eternal tomb which is in the cemetery at the pyramid: "Great-is-Khafre." . . . [lands, people], and everything which I conveyed to them. As for the towns of the (mortuary) endowment of the purification, wherewith purification is made . . . .[1]

NO. 2. THE CONTRACTS OF HEPZEFI[2]

Engraved upon the east wall of the great hall in Hepzefi's cliff-tomb at Assiut. The only complete copy is that published by Mr. Griffith (F. L. Griffith, "The Inscriptions of Siût and Dêr Rîfeh, London, 1889), which is a model of care and accuracy. It is unnecessary to refer to the earlier publications, as Mr. Griffith has collated them all. The first adequate treatment was that of Erman, written, unfortunately, before the appearance of Mr. Griffith's text ("Zeitschrift für ägyptische Sprache," 1882,

[1] At least three lines are lost at the end.

[2] [Reprinted, by permission, from "Ancient Records of Egypt," Vol. I, p. 258 *seq.*, by JAMES H. BREASTED, University of Chicago Press, 1906. These contracts are of the twelfth dynasty, Sesostris I, 1980–1935, B.C.]

159–84), which fact necessitated leaving some obscure passages unrendered. *Cf.* also Maspero, "Etudes de mythologie et d'archéologie," I, 62–74. Legal documents from civil, as distinguished from criminal, processes of early Egypt are . . . rare . . . . . .

The ten contracts were made solely to secure to Hepzefi, after his death, certain ceremonies and offerings from the priesthoods of Siut. Similar contracts were customarily made with the priests of Abydos. Mentuhotep and Sehetepibre, nobles of the same time, say on their Abydos tombstones: "*I gave contracts for the remuneration of the prophets of Abydos.*" The kings did the same.

The form of the contracts is sufficiently clear; but the language is very involved, and burdened with an excess of relative clauses. Space will not permit the full commentary which they need in many places. The general reader should refer to Erman, "Life in Ancient Egypt," 145–47, 497, 498. But attention should at least be called to the sixth contract which Hepzefi as count made with himself as superior prophet of Upwawet.

Two facts in the socio-political organization of the time are brought out by these contracts: (1) The property of the prince was held under two different titles, viz., (*a*) by inheritance from his father, the property being called the "*paternal estate*," which he could bequeath at will; and (*b*) by virtue of his appointment as "*count*" by the king, the property being called the "*count's estate*," which he could not legally bequeath. The distinction between these two estates is clearly maintained throughout, and whenever Hepzefi bequeathes anything from his "*count's estate*" he concedes that such a title can endure only so long as his successors are willing to recognize it, and by appeal to the common feeling in such matters, he urges his successors to recognize it. (2) There are in the contracts four classes of society: the "*count*," or nomarch; the official; the "*citizen*" (lit., "*the small*"), and the "*peasant*," lit., "*belonging to the field*," enumerated in descending scale. The interrelations of the four are not wholly discernible. The "*citizen*," like the count, gives to the temple from fields called "*his field*," which he therefore either owned or held in rental. The peasant is called "*his* (the citizen's) *peasant*," and may therefore have been his serf or slave. He cultivated the field for the citizen, and carried the harvest offering to the temple for him. The "*official*" may have been of the same social class as the "citizen."

The importance of these contracts in a study of the mortuary customs and beliefs is evident, but a discussion of these questions does not fall within the scope of the present translations. . . . . .

I. First Contract

Title

1. Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the lay priests of the temple of Upwawet, lord of Siut, to-wit:

What Hepzefi Receives

2. There shall be given to him: A white loaf per individual priest, for his statue, which is in the temple of Anubis, lord of Rekreret on the first of the 5 intercalary days, when Upwawet, lord of Siut, proceeds to this temple.

What He Pays

3. He hath given to them for it his share in the bull offered to Upwawet, lord of Siut, in this temple, when he proceeds to it, consisting of his quarter, due to the count.

Source of Payment

4. Lo, he spake to them, saying: "Behold ye, I have given to you this quarter due to me from this temple, in order that this white bread may be endowed, which ye give to me." Lo, they had given to him the inherited portion of the bull, for his statue, (which is) in charge of his mortuary priest, before he gave to them of this quarter.

Conclusion

5. Lo, they were satisfied with it.

II. SECOND CONTRACT

Title

6. Contract, which the count, the superior prophet, Hepzefi, triumphant, made with the lay priests of the temple of Upwawet, lord of Siut, to-wit:

What Hepzefi Receives

7. There shall be given to him:

(*a*) White bread by each one among them, for his statue, (which is) in charge of his mortuary priest, in the first month of the first season on the first day, New Year's Day, when the house makes gifts to its lord, when the fire is kindled in the temple.

(*b*) And they shall go forth following his mortuary priest, at his glorification, until they reach the northern corner of the temple, as they do, when they glorify their own noble ones, [the dead] on the day of kindling the fire.

What He Pays

8. He hath given to them for it a heket of grain from every field of the estate, from the first of the harvest of the count's estate; as every citizen of Siut does, from the first of his harvest. Now, behold, he begins with having his every peasant give it into this temple, from the first of his field.

Injunction to Future Nomarchs

9. Lo, he said: "Behold, ye know that, as for anything which any official or any citizen gives into the temple, from the first of his harvest, it is not agreeable to him, that there should be lack therein. Therefore shall no future count diminish to future priests, that which is secured by contract of another count. This grain shall belong to the lay priests, each by himself; no priest, who shall give to me this white bread, shall divide (it) to his colleagues; because they give this white bread, each by himself."

Conclusion

10. Lo, they were satisfied with it.

III. THIRD CONTRACT

Title

11. Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the official body of the temple, to-wit:

What Hepzefi Receives

12. There shall be given to him bread and beer in the first month of the first season, on the eighteenth day, the day of the Wag-feast. List to that which shall be given:

REGISTER OF NAMES	JARS OF BEER	FLAT LOAVES	WHITE LOAVES
Superior prophet	4	400	10
Announcer	2	200	5
Master of secret things	2	200	5
Keeper of the wardrobe	2	200	5
Overseer of the storehouse	2	200	5
Keeper of the wide hall	2	200	5
Overseer of the house of the ka	2	200	5
Scribe of the temple	2	200	5
Scribe of the altar	2	200	5
Ritual priest	2	200	5

What He Pays

13. He hath given to them for it, 22 temple-days, from his property of his paternal estate, but not from the property of the

count's estate: 4 days to the superior prophet, and 2 days to each one among them.

Definition of "Temple-Day"

14. Lo, he hath said to them: "Behold, as for a temple-day, it is 1/360 of a year. When ye therefore divide everything that comes into this temple, consisting of bread, of beer, and of meat for each day, that which makes 1/360 of the bread, of the beer, and of everything, which comes into this temple, is the unit in these temple-days which I have given to you. Behold, it is my property of my paternal estate, but it is not the property of the count's estate; for I am a priest's son, like each one of you. Behold, these days shall belong to every future official staff of the temple, since they deliver to me this bread and beer, which they give to me."

Conclusion

15. Lo, they were satisfied with it.

IV. FOURTH CONTRACT

Title

16. Contract which the count, the superior prophet, Hepzefi, triumphant, made with the lay priests of Upwawet, lord of Siut, to wit:

What Hepzefi Receives

17. There shall be given to him:

(*a*) A white loaf per each individual among them, for his statue, which is in the temple, in the first month of the first season, on the eighteenth day, the day of the Wag-feast.

(*b*) And they shall go forth, following his mortuary priest, at his glorification, when the fire is kindled for him, as they do when they glorify their own noble ones, on the day of kindling the fire in the temple. Now, this white bread shall be under the charge of my mortuary priest.

What He Pays

18. He hath given to them for it:

(*a*) A khar [measure of bulk] of fuel for every bull, and an uhet [measure of bulk] of fuel for every goat, which they give

into the storehouse of the count, when each bull and each goat is offered to the temple, as ancient (dues) which they give into the storehouse of the count. Lo, he hath remitted it to them, not collecting it from them.

(*b*) And hath given to them 22 jars of beer and 2200 flat loaves which the official body of the temple give to him in the first month of the first season, on the eighteenth day, as compensation, for their giving white bread per each individual among them, from that which is due to them from the temple, and (as compensation for) his glorification.

Further Specification

19. Lo, he spake to them, saying: "If this fuel be reckoned against you by a future count; behold, this bread and beer shall not be diminished, which the official body of the temple deliver to me, which I have given to you. Behold, I have secured it by contract from them."

Conclusion

20. Lo, they were satisfied with it.

V. Fifth Contract

Title

21. Contract, which the count, the superior prophet, Hepzefi, triumphant, made with the [keeper of the wardrobe] of the temple, concerning:

What Hepzefi Receives

22. Three [wicks] with which the fire is kindled for the god.

What He Pays

23. While he (the count) has given to him (the keeper) for it: 3 temple-days. Now, these 3 temple-days shall be due to every future [keeper of the wardrobe], because these 3 [wicks] are due to him (the count).

Disposition of Wicks

24. 1. Lo, he spake to him saying: "One of them shall be given to my mortuary priest, when he goes forth, kindling the

fire with it for the god, on the fifth of the 5 intercalary days, New Year's night, by the [keeper of the wardrobe]. He shall [deliver] it to my mortuary priest after he does that which he does with it in the temple."

25. 2. "He shall give another on New Year's Day, in the morning, when the house makes gifts to its lord, when the lay priests of the temple give to me this white bread, which they give to me per individual priest, on New Year's Day. It shall be due from my mortuary priest at my glorification."

26. 3. "He shall give another in the first month of the first season on the eighteenth day, the day of the Wag-feast, at the same time with the white bread, which they give to me per individual priest. This [wick] shall be due from my mortuary priest when glorifying me, together with the lay priests."

Lo, he said to him:

Definition of "Temple-Day"

27. "Behold, as for a temple-day, it is 1/360 of a year. When ye therefore divide everything that comes into the temple, consisting of bread, beer, and everything for each day, that which makes 1/360 of the bread, of the beer, and of everything which comes into this temple, is the unit in these temple-days which I have given to thee. Behold, it is my property, of my paternal estate, but not of the count's estate."

Future Validity of Agreement

28. "Now, these 3 temple-days shall belong to every future [keeper of the wardrobe,] because these 3 [wicks] are due to him, which thou hast given to me for these 3 temple-days, which I have given to thee."

Conclusion

29. Lo, he was satisfied with it.

VI. SIXTH CONTRACT

Title

30. Contract which the count, the superior prophet, Hepzefi, triumphant, made with the superior prophet of Upwawet, concerning:

What Hepzefi Receives

31. The roast of meat which is due upon the altar, which is placed upon the oblation-table, for every bull which is slaughtered in the temple.

And one jar for (every) jar of beer every day of a procession; which shall be due to every future superior prophet.

What He Pays

32. He (the count) hath given him (the superior prophet) for it, 2 temple-days from his property, of his paternal estate, but not from the property of the count's estate.

Disposition of Meat

33. Lo, the count Hepzefi spake, saying: "When this roast of meat and this jar of beer come for every day of a procession, they are due to my statue, (which is) in charge of my mortuary priest."

Conclusion

Lo, he was satisfied therewith, in the presence of the official body of the temple.

VII. SEVENTH CONTRACT

Title

34. Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the great priest of Anubis, concerning:

What Hepzefi Receives

35. Three [wicks] due to him, with which the fire is kindled in the temple of Anubis:

One on the fifth of the 5 intercalary days, the New Year's night.

Another on New Year's Day.

Another in the first month of the first season, on the seventeenth day, the night of the Wag-feast.

What He Pays

36. He hath given to him for it: 1,000 measures of land in [——] from the fields of his father, as compensation for these 3

[wicks], which he gives to my mortuary priest, in order to kindle the light for me therewith.

Conclusion

37. Lo, he was satisfied therewith.

VIII. EIGHTH CONTRACT

Title

38. Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the lay priests of the temple of Anubis; to-wit:

What Hepzefi Receives

39. There shall be given to him:

(*a*) A white loaf per each individual among them, for his statue, in the first month of the first season, on the seventeenth day, the night of the Wag-feast.

(*b*) And that they shall go forth, following his mortuary priest, and kindle for him (the count), the fire at his glorification, until they reach the lower steps of his tomb, just as they glorify their noble ones, on the day of kindling the fire.

(*c*) And that the priest belonging in each month shall give [—] of bread and a jar of beer for his statue, which is on the lower steps of his tomb, when he comes forth from offering in the temple every day.

What He Pays

40. He hath given to them for it: grain from the first of the harvest of every field of the count's estate, as every citizen of Siut does from the first of his harvest. Now, behold, he begins with having his every peasant give it from the first of his field into the temple of Anubis.

Injunction to Future Nomarchs

41. Lo, the count, Hepzefi, said: "Behold, ye know, that, as for every official and every citizen, who gives the first of his harvest into the temple, it is not agreeable to him, that there should be lack therein. Therefore shall no future count diminish to future priests that which is secured by contract of another count."

Individual Payment and Remuneration

42. This grain shall belong to the lay priests, per each individual priest, who shall give to me this white bread. He shall not divide it to his colleagues, because they give this white bread, each by himself.

Conclusion

43. Lo, they were satisfied therewith.

IX. NINTH CONTRACT

Title

44. Contract which the count, the superior prophet, Hepzefi, triumphant, made, with the overseer of the necropolis, and with the mountaineers, to-wit:

What Hepzefi Receives

45. There shall be given:

(*a*) That they go to the house of Anubis, on the fifth of the 5 intercalary days, (being) New Year's night, and on New Year's Day, to receive 2 [wicks], which the great priest of Anubis gives to the count, Hepzefi.

(*b*) And that they go, at his glorification, until they reach his tomb.

(*c*) And that they give this one [wick] to his mortuary priest, after they glorify him, just as they glorify their noble ones.

What He Pays

46. He hath given to them for it:

(*a*) 2,200 measures of land in the [—], from his property of the paternal estate, but not of the count's estate:

REGISTER OF NAMES	MEASURES
Overseer of the Necropolis	400
Chief of the Highland	200
Eight mountaineers	1,600

(*b*) Besides giving to them the foot of the leg of every bull, that shall be slaughtered upon this highland, in every temple.

What Hepzefi Further Receives

47. They have given to him:

The Overseer of the Necropolis, 2 jars of beer; 100 flat loaves; 10 white loaves.

The Chief of the Highland, 1 jar of beer; 50 flat loaves; 5 white loaves.

Eight mountaineers, 8 jars of beer; 400 flat loaves; 40 white loaves.

For his statue, (which is) in charge of his mortuary priest, in the first month of the first season, on the first day, (being) New Year's Day, when they glorify him.

Future Validity of Contract

48. Lo, he said to them: "Behold, these measures of land, which I have given to [you], shall belong to every overseer of the necropolis, to every chief of the highland, and to every mountaineer who shall come (hereafter), because they shall deliver to me this bread and beer."

Additional Stipulation

49. "And ye shall be behind [my] statue which is in my garden, following it when ——, at every feast of the beginning of a season, which is celebrated in this temple."

Conclusion

50. Lo, they were satisfied therewith.

X. TENTH CONTRACT

Title

51. Contract which the count, the superior prophet, Hepzefi, made, with the overseer of the highland, to-wit:

What Hepzefi Receives

52. There shall be given to him 1 jar of beer, 1 large loaf, 500 flat loaves, and 10 white loaves, for his statue, (which is) in charge of his mortuary priest, in the first month of the first season, on the seventeenth day, the night of the Wag-feast.

What He Pays

53. He hath given to him for it:

(*a*) 1,000 measures of land in [——] from his property of his paternal estate, but not from the property of the count's estate.

(*b*) And a quarter of every bull that is slaughtered on this highland in every temple.

Future Validity of Contract

54. Lo, he said to the overseer of the highland: "Behold, these measures of land shall belong to every future overseer of the highland, because he delivers to me this bread and beer."

Conclusion

55. Lo, he was satisfied therewith.

NO. 3. CONTRACT OF MARRIAGE[1]

The demotic contract of which I here publish a translation bears the number 2433 of the Egyptian collection in the Louvre. It is not unique of its kind; for there are like ones in the British Museum, the Museum of Turin, and amongst the demotic contracts of Berlin and Leyden. M. Brugsch also has given at the end of his "Grammaire demotique" the facsimile of a marriage contract of the same sort, which he thought was a deed of sale. It may, therefore, be said that the decipherment of this kind of documents is a new fact in science. It must be remarked that the text chosen is part of a collection of documents relating to a single family, the great portion of the deeds being in the Louvre and some in the British Museum. Thus it is known that by virtue of the present marriage settlement, and of the mortgage there expressly specified, that Ta-outem three years afterward, in the year 36 of Philadelphus, acknowledged by letter a debt of 15 shekels repayable in the 33rd year, that is to say 36 months, and that these 15 shekels had then produced 28 (Papyrus No. 2443 of the Louvre). At this date, if he had not paid, the property of the husband would have belonged to the wife. Philadelphus died before having reached the 33rd year of his reign; but the Papyrus No. 2438, dated in the 2d year of Euergetes, contains in effect the final surrender of his property, which Pchelchons made to his wife Ta-outem. This property came to Pchelchons originally by inheritance from his father, who had apparently assigned to his own wife in the Papyrus No. 2428 of the Louvre. He, according to Papyrus 2424 of the same collection and Hay No. 2 of the British Museum, had divided them between Patem and Pana their sons. Patem, in Papyrus No. 2424, makes a reference to the marriage settlement here published, when he speaks of the gift which his mother had made him of the property which belonged to Pchelchons his father.

The Papyrus itself has been published in the "Transactions of the Society of Biblical Archæology," Vol. VI, p. 284, with a translation in French by the Author.

[1] [Translated by E. REVILLOUT. Reprinted, by permission, from "Records of the Past" (Vol. X, p. 75 *seq.*), published by Samuel Bagster and Sons, London. From the reign of Ptolemy Philadelphus (Thirty-first dynasty), b. 309, d. 247 B.C.]

The year 33 χοϊαχ of the King PTOLEMY, the god, being AETUS, son of APOLLONIUS, Priest of ALEXANDER and of the gods brothers, being DEMETRIA, daughter of DIONYSIOS, Canephoros before ARSINOE PHILADELPHIA, the Pastophore of AMMON API of the Western region of Thebes. PATMA son of PCHELCHONS, whose mother is TAHET, says to the woman TA-OUTEM, daughter of RELOU, whose mother is TANETEM: I have accepted thee for wife, I have given thee one argenteus,[1] in shekels 5, one argenteus in all for thy woman's gift. I must give thee 6 oboli, their half is 3, to-day 6, by the month 3, by the double month 6, 36 for a year: equal to one argenteus and one fifth, in shekels 6, one argenteus and one fifth in all for thy toilet during a year. Lastly, a tenth of an argenteus, in shekels one half, one argenteus one tenth for thy pin[2] money by the month, which makes one argenteus and one fifth, in shekels 6, one argenteus and one fifth for thy pin[2] money for the year. Thy pin[2] money for one year is apart from thy toilet money. I must give it to thee each year, and it is thy right to exact the payment of thy toilet money, and thy pin[2] money, which are to be placed to my account. I must give it to thee. Thy eldest son, my eldest son, shall be the heir of all my property, present and future. I will establish thee as wife.

In case I should despise thee, in case I should take another wife than thee, I will give thee 20 argenteus, in shekels 100, 20 argenteus in all. The entire of the property which is mine, and which I shall possess, is security[3] of all the above words, until I have accomplished them according to their tenor. I have no more to allege, any other matter, any other word . . .[4] with thee. The writings which the woman TAHET, daughter of TEOS, my mother, has made to me concerning one half of the entire of the property which belonged to PCHELCHONS, son of PANA, my father,[5] and the rest of the contracts coming from her, and which are in my hand, belong to thee, as well as the rights resulting from it. For thee all that, as well as that which I shall justify in their name. Son, daughter,[6] coming from me, who shall annoy thee on this subject will give thee 20 argenteus, in shekels 100, 20 argenteus in

[1] There is scarcely necessity to observe that the context sufficiently proves that an argenteus was worth 5 shekels, and that a shekel was worth 6 oboli.

[2] Or, "pocket money."

[3] This specification of the mortgage is very remarkable.

[4] Lacunæ.

[5] See the preface for this point.

[6] Patma had in reality a daughter by another marriage, who in Papyrus No. 2438, expressly agrees to the settlement of all the patrimony made by Patma to his new wife.

all. He will deliver them up to thee entirely without any opposition, the writer of this act is . . . the Priest of AMMON HORPNETER, son of SMIN.

SECTION 2. BABYLONIAN AND ASSYRIAN

NO. 1. EARLY BABYLONIAN LEGAL DOCUMENTS[1]

TRANSLATIONS OF SELECTED TEXTS

1. *Purchase of a Slave*

One slave, by the name of *Ina-gâti-Shamash*, the servant of (the?) *GÀL-SHÀG-GA*, *Adajṭaum* son of *Abu-w(j)aqar* has bought from his master (the?) *GÀL-SHÀG-GA*. He has paid the money according to his full prize. The *bukanu* has been transferred. For all future time they shall not complain against one another. The spirit(?) of the god *Marduk* and (the king) *Sin-mubalit*, the spirit(?) of *Bêl-ṭâbi* and his consort(?) they have invoked.

Follow the names of five witnesses.

2. *Purchase of a Special Kind of House*

$1\frac{1}{2}$ *SAR* of *E-RU-A*, not *ruggubu*, situated in *Sippar-jaḫrurum*, which on the former tablet had been designated as *E-KI-GAL*, on one side adjoining the house of *Ḫungulum* son of *Nabium-êkalli*, which he had bought from the sons of the *bârû* priest *Rammân-idinnam*, on the other side adjoining the street — its front being toward the place of the *Isinites*, its rear toward the house of the scribe *Warad-Ibari* son of *Warad-Mamu* — which in the year "when King *Ammî-ditana* . . . the protecting deities" *Ḫungulum* son of *Nabium-êkalli* had bought from *Ilî-iqîsham* son of *Ali-lûmur* for $6\frac{5}{6}$ sheqels, including the *SI-BI*, — (this house) the *Shamash* priestess *Iltâni* daughter of *Ibi-NIN-SHAḪ* has bought with her money from *Ḫungulum* son of *Nabium-êkalli*. She has paid seventeen sheqels of silver, as its full prize, and one-half of a sheqels he has made as a *SI-BI*. Her deed is closed. She is satisfied. For all future days they shall not complain against

[1] [Reprinted, by permission of the University of Pennsylvania, Department of Archeology, from "Babylonian Legal and Business Documents (from the time of the First Dynasty of Babylon, chiefly from Sippar)," by HERMAN RANKE — The Babylonian Expedition of the University of Pennsylvania (Series A, Cuneiform Texts, edited by H. V. Hilpricht), Vol. vi, part 1, published at Philadelphia, 1906.]

one another. The spirit(?) of *Shamash, Aja, Marduk,* and of the king *Ammî-zaduga* they have invoked.

Follow the names of ten witnesses and the scribe.

Annotations: Li. 1. *E-RU-A* seems to designate a special kind of house (Meissner, *A. P. R.*, p. 104). It has not yet been found written phonetically in early Babylonian texts. The meaning of a house, which is "not *ruggubu*," is not yet clear. Li. 17. The Semitic reading of *SI-BI* is not yet certain. For its meaning, *cf.* Meissner, *l.c.*, p. 96. [The lines (Li.) refer to the transliteration shown in the original text and omitted here.]

3. *A Man buys back his Father's House, which had been sold to a Stranger*

One-half *SAR* of house at *Gagim,* adjoining the house of the Shamash priestess *Ḫalijatum,* daughter of *Manum-* . . . and adjoining also the house of *Ribam-ilî,* [son of *Bûr*]-*Sin,* which *Shamash-bâni* son of *Ilushu-ibishu* had bought from *Sin-idinnam* son of *Bûr-Sin* — *Ribam-ilî* the son of *Bûr-Sin* has ransomed it, his father's house, from *Shamash-bâni* son of *Ilushu-ibishu.* One mine of silver he has paid. The matter is finished, he is satisfied. For all future time they shall not complain against one another. The spirit(?) of the gods *Shamash, Aja* and *Marduk,* and of *Ḫammu-rabi* they have invoked.

Follow the names of eight witnesses and the scribe.

4. *Hiring of a Servant*

Maruni(?) son of *Etel-bî-Rammân* has hired *Warad-Rammân* the son of *Warad-kubi* from (his father) *Warad-kubi,* from the first day of the month Elûlu unto (next) new year. Four sheqels of silver he has paid as monthly rent. If he . . . , he shall lose his rent.

Follow the names of two witnesses.

5. *A Man rents a Field*

One and one-third *GAN* of field, "good" land, the field of the Shamash priestess *Mellatum* daughter of *Ibkusha* — the scribe *Marduk-mubaliṭ* has rented from the Shamash priestess *Mellatum,* the owner of the field, in order to cultivate it, at the rate of six *GUR* of grain on one *GAN.* At harvest time he shall pay six *GUR* of grain at the gate of *Gagum.* One sheqel of silver she has received out of the rent of her field.

6. *Six Men rent a Piece of Land, to raise Grain on it. At Harvest Time Each Partner shall receive One-Sixth of the Proceeds*

A piece of land — to its full extent — district of *Tuḫamu*, in the midst of woodland(?) and stepland, *Ibi-Bêl* the scribe, *Warad-kubi* son of *Ibni-Sin*, *Ea-sharri-ilî* son of *Sizzatum*, *Rammân-lû-zîrum* son of *Ibna(?)tum*, *Warad-Ilulî* son of *Ibnatum*, and *Aḫuni* son of *Warad-kubi* have rented in partnership, in order to plant grain on it. At harvest time they shall harvest the field, thrash the grain, and sow anew(?). One part *Ibi-Bêl* the scribe shall take, and *Warad-kubi* son of *Ibni-Sin*, *Ea-sharri-ilî*, *Rammân-lû-zîrum*, *Warad-Ilulî*, and *Aḫuni* son of *Warad-kubi* (shall take) each one part.

Follow the names of four witnesses, including the scribe. Seal impressions of *Warad-AB-AB* and *Ibni-Marduk* (both witnesses), and of *Warad-kubi* (one of the partners).

7. *A Man rents a House for One Year*

A house belonging to the Shamash priestess *Ribatum*, *NIN-SHAḪ-nâṣir* son of *Nûr-alishu* has rented for one year from the Shamash priestess *Ribatum* daughter of *Ibgatum*. He shall pay three sheqels as one year's rent. As first payment on the rent of one year she has received one sheqel and a half. On the first of the month *Waraḫsamna*, in its beginning, he shall move in. Three *isini* of Shamash, one *SHIR-ti*, 10 qa of *shikaru* he (the lessee) shall deliver. Concerning the *manaḫtu* of the house, which the lessee is going to make — if the landlord says to the tenant: move out! — he (the tenant) shall (may?) destroy his *manaḫtu*. If the tenant moves out . . . (of his own will?), he shall lose (variant: not destroy) his *manaḫtu*.

Follow the names of two witnesses and the scribe.

8. *A Man borrows Money from the Temple*

5½ sheqels of silver *Idin-Shamash* has borrowed from the god *Shamash* (*i.e.*, from the administration of his temple). At harvest time he shall pay back to *Shamash* the money and its interest.

Follow the names of two witnesses.

9. *A Man borrows Grain from a Priestess*

10 *gur* of grain *Ibiqsha* son of *Jasi-il* has borrowed from the *Shamash* priestess *Êli-êrizza* daughter of *Awil-ili*, at the rate of 1 *pi* 40 *qa* interest on one *gur*. At harvest time, in the month *Shadûtu*, he shall pay back the grain and its interest.

Follow the names of two witnesses.

10. *A Shamash Priestess gives her Son as a Foster Child to a Married Couple*

A boy by the name of *Shamash-tukulti* the son of the *Shamash* priestess *Ḫuzalatum*, his mother *Ḫuzalatum*, daughter of *Sumu-but* . . . (?), has given as foster child to *Mati-ilu* and *Erishtum*. *Shamash-tukulti* shall be the son of *Mati-ilu* and *Erishtum*. If *Shamash-tukulti* says to his father *Mati-ilu:* "You are not my father," or to his mother *Erishtum:* "You are not my mother," then they shall make him a mark(?) and sell him for money. If, however, *Mati-ilu* and *Erishtum* say to their son *Shamash-tukulti:* "You are not our (?, my?) son," they shall also give him *dullu*(?) and he shall go free. Nobody has anything (*i.e.*, any claim) against him. The spirit(?) of the gods *Shamash*, *Aaj*, *Marduk* and the spirit(?) of (the king) *Abil-Sin* they have invoked (against anyone) who shall change the contents of this tablet.

Follow the names of four male and ten female witnesses.

11. *A Shamash Priestess adopts a Young Woman and her Suckling Child*

Surratum, together with (her) suckling daughter, is the daughter of the Shamash priestess *Erishti-Aja*, whom the Shamash priestess *Erishti-Aja*, her mother, has "purified" and adopted . . . the Shamash priestess *Erishti-Aja*, daughter of *Sharrum-Rammân*, has "cleansed" her and has turned her face toward the rising sun. As long as her mother *Erishti-Aja* lives, she (the adopted one) shall support her. If the Shamash priestess *Erishti-Aja*, her mother, is called away by her god (*i.e.*, if she dies), she (*i.e.*, *Surratum*) shall be "clean." She shall be independent. All her desires she has reached. For all future times none of the children of the Shamash priestess *Erishti-Aja*, daughter of *Sharrum-Rammân*, and of the children of her brother *Kalûmum*, male and

female, who ever there are or will be, shall have a claim against *Surratum* the daughter of *Erishti-Aja* and her suckling daughter.

12. *Part of a Will. Statement of the Part of the Paternal Property (consisting in Fields, Garden, Houses, Servants, etc.) which belongs to a Certain Man, after the Whole has been divided between him and his Three Brothers*

10 *GAN* of stepland, situated beside the field of *Warad-Nannar*, 8 *GAN*(?) land beside(?) *Zarikum* and the canal, 10 *GAN*(?) of field, region(?) of *Shamash-nâṣir* — altogether 26 *GAN* of field, which *Gurrudum* has cultivated(?), 1 *GAN* of garden in the field of *Buta*, situated beside the canal and the daughter of *Warad-Ishtar*, 7 *SAR* of *E-RÙ-A*, 2 *SAR* of "big house," the dwelling place of his father *Ṣili-Shamash*, 3 *SAR E-KI-GAL*, situated beside the house of *Mattatum*, one man servant (named) *Kalûmum*, one man servant (named) *Zaphu-liphur*, 1 maid servant (named) *Ilî-dumgi*, 1 maid servant (named) *Ali-abusha*, 1 chariot *sha i-na ba lik*, 2 *KUM* (?) vessels — all this is the part (of the parental property) of *Il(u)-bî-Shamash*, son of *Ṣili-Shamash*, which he divided (*i.e.*, got after the division) with his brothers *Ibi-Shamash*, *Ibiq-iltum*, and *Awât-Shamash*. They have divided, finished. Whatever of the property shall come up (yet), they shall divide into equal parts. In all times to come they shall not complain one against the other. The spirit(?) of the gods *Shamash*, *Marduk*, and of the king *Hammurabi* they invoked.

Follow the names of nine witnesses and the scribe. Seal impressions of *Sini-dinnam*, *Idin-Sin*, and *Shamajatum*.

13. *Record of a Decision concerning the Wall of a House, against which Complaint had been brought before the Shâbir of Sippar*

Against the wall of *Warad-Sin*, *Ibku-Sin* son of *Sharrum-Shamash* has brought claim against *Warad-Sin*, and the men assisted as witnesses(?). They inspected the wall, and the wall measuring half a *GAR* and two cubits *USH*, 1 cubit *SAG*, $3\frac{1}{3}$ *GIN*, from the wall of *Nâr-GIR* unto the wall of *Warad-Sin*, they proclaimed as the property of *Warad-Sin*, before the *shâbir* of *Sippar*, *Sharrum-kîma-ilim*. For all future times *Ibku-Sin* shall bring no more complaint against *Warad-Sin* concerning this wall. The spirit(?) of the gods *Shamash*, *Aja*, *Marduk*, and of the king *Samsu-iluna* they invoked.

Follow the names of six witnesses.

14. *Memorandum of a Loan of Money*

Fourteen sheqels of silver, for the prize of the grain of the *GIS H–BAR*, out of the prize of the palace, the property of the scribe *Utul-Ishtar*, which the merchant *Sin-ishmeani* son of *Awilija* had received, *Ilushumibi* son of *Marduk-Mushalim* has borrowed from the merchant *Sin-ishmeani* son of *Awilija*. . . . he shall pay back to the bearer of his tablet the grain, *GIS H–BAR* of the god *Shamash*, in *Kar Sippar*.

NO. 2. LATER CONTRACT TABLETS[1]

I. — RÊMUT LENDS MONEY TO HIS NEEDY NEIGHBOURS DURING A TIME OF DEARTH

This inscription, the writing of which is above the average, is divided into four sections. The first gives the text of the transaction; the second the names of the witnesses; the third the name of the scribe, the place, and the date; and the fourth the record of the famine. It is a remarkable text, and possesses a value beyond the mere record, for it shows how great the need of the people must have been. The tablet is numbered 81–11–3, 71. This interesting text is a good proof of the unsettled state of Babylonia at the time it was written. It was in the year 648 B.C. Samas-sum-ukîn or Saosduchinos had been on the throne of Babylonia, under the suzerainty of his brother, Assur-banî-apli, for 19 years, and the end of his rule, and his own tragic death, were nearing. The Assyrian army, sent by his brother, was probably at that time overrunning the land, and destroying everything wherever they passed. Hence were the people overtaken by want and misery, such as often happened to them in those days. If we want to know how the Babylonians behaved towards each other during this trying time, the tablet here translated depicts it to us clearly, and it is a picture worthy of consideration. Rêmut, a man probably richer and more fortunate than his neighbours, lends a sum of money which was hardly to be considered small (⅔ths of a mana = 50 shekels) to Musêzib-Marduk and Kullâ, his wife, without interest (for none is mentioned). This money is lent, not for a week or a month, but *until the land brings forth again*, whenever that might be. All honour to Rêmut. It is to be hoped that he and his friends passed happily through this trying time when there was "want and famine in the land, and the people were dying for want of food"; and well has Marduk-êdhir, the scribe, done in recording the fact.

The name of the city mentioned in the last paragraph (Lamîma) is doubtful. The last syllable may be *ra*, in which case we must read Lamîra. There is yet a third possibility, namely, that the characters are quite correctly read, but that the final *ma* is the well-known enclitic particle. If this be the case, we must read "At this time, in the city of Lamî also, there is want and famine in the land." After the word *makalê* there is a small piece of the tablet broken away, but this seems to have contained no word of importance, if, indeed, it was inscribed at all.

[1] [Reprinted by permission from "Records of the Past," N. S. (Vol. IV, p. 96 *seq.*) published by Samuel Bagster and Sons, London. Translated by THEO. G. PINCHES.]

1. $\frac{5}{6}$ of a mana of silver from Rêmut, son of . . ., unto Musêzib-Marduk, and Kullâ, his wife, for necessities. In the day when the face of the land sprouts (again), the money, $\frac{5}{6}$ of a mana, in its full amount, Musêzib-Marduk and Kullâ shall repay to Rêmut.

2. Witnesses: Ablâ, son of Arad-bît-Nergal; Sapik-zēri, son of Musêzib-Marduk; Bêl-upakhkhir, son of Tullubu; Ugara, son of Sippê; Nabû-sum-utsur, son of the potter;

3. and the scribe, Marduk-êdhir. Babylon, month Tebet, day 9th, year 19th, Samas-sum-ukîn king of Babylon.

4. At this time, in the city of Lamî*ma*, want and famine [are] in the land. The people are dying for want of food.

II. — A Testimony to Babylonian Overlordship in Tyre

The Governor of Kadesh makes a Pledge with Regard to Some Cattle

This little text, which is an ordinary contract-tablet of unbaked clay, is important not only as giving the date of the Babylonian dominion so far from Babylonia, but also for the names, some of which are clearly Phœnician. The text is slightly damaged, but the wanting characters can, in every case, be restored with perfect certainty. The number is 81–4–28, 88.

The cause of Milki-idiri taking the obligation here recorded upon himself it is unfortunately impossible to determine. Judging, however, from the fact that it is cattle that are given, and that only in event of inability to get the animals, money was to be substituted, it may be inferred that he entered into the obligation by way of compensating Ablâ for a loss for which he was in some way responsible. The contract gave Milki-idiri nearly ten months in which to discharge the obligation (22d of Tammuz, or June-July, to the 15th of Iyyar, or April-May). . . .

. . . The name Kidis (which was probably pronounced Kedes or Kedesh) is undoubtedly Kedesh (Kadesh), on the lake of Horns, a site of considerable interest, in that it was the scene of a conflict between Rameses II and the Kheta or Hittites, and is supposed to be mentioned in 2 Samuel xxiv. 6, under the name of Takhtim Khodshi, in the neighbourhood of Tyre and Sidon.

* * * * * * *

About the beginning of July, therefore, in the year 564 B.C., Melekhidri, Governor of Kadesh, visited Tyre for the purpose of attending to his affairs.

On the 15th day of the month Iyyar, Milki-idiri, Governor of Kidis, will get *three* cows and their young, and will give them to Ablâ, son of Nadin-âkhi, descendant of the priest of the Sungod. If he cannot get (them), Milki-idiri will give to Ablâ, son of Nadin-âkhi, son of the priest of the Sungod, 5 manna of silver.

Witnessing: Bunduti, son of Nabû-ukîn, descendant of Nabutu; Musêzib-Marduk, son of Ablâ, descendant of the fisherman(?); Marduk-sakin-sumi, son of Marduk-êdhir, descendant of Êdheru;

and the scribe, Pir'u, son of Sulâ. Tyre, month Tammuz, day 22d, year 40th, Nebuchadnezzar, King of Babylon.

III. — NERIGLISSAR GIVES HIS DAUGHTER GIGÎTUM IN MARRIAGE TO NABÛ-SUM-UKÎN, PRIEST OF NEBO, AND DIRECTOR OF E-ZIDA

This tablet is one of the class of wedding-contracts, and is unfortunately only a fragment. Such as it is, however, it is a welcome addition to our knowledge, and it is greatly to be hoped that a duplicate, completing the text, will some day be found. The Museum number is 81–11–3, 222.

Although this tablet is not by any means perfect, and the text does not, in its present state, communicate to us the conclusion of the matter, it may nevertheless be regarded as tolerably certain that Neriglissar did give his daughter Gigîtum in marriage to Nabû-sum-ukîn; for, had it been otherwise, there would have been no need for this document, the importance attached to which may be gathered from the fact that more than one copy was made, the text preserved in the British Museum being that belonging to the temple (E-zida, the Birs-Nimroud) of which Nabû-sum-ukîn was high-priest and director.

As will be seen from the translation, Nabû-sum-ukîn does not use any pronoun when making his request known to Neriglissar. He merely says, "Give Gigîtum, thy virgin daughter, to wifehood, and let her be a wife," or "the wife." An examination of texts of a similar class shows that this was the customary formula. The word for "wife" is written with the usual ideogram, and is unaccompanied by any pronoun. A similar text in the Liverpool Museum, however, spells the word out. . . . Other examples of this grammatical usage exist.

The remainder of the tablet was probably taken up with the usual conditions — the penalty on Nabû-sum-ukîn if he should divorce or abandon his wife; the penalty on Gigîtum if she should disown or forsake her husband; directions with regard to the amount and disposal of her dowry, etc. It is here to be noted that Herodotus was probably wrongly informed with regard to the compulsory nature of the public prostitution of unmarried women practised in ancient Babylonia, for the expressions found in these tablets point, sometimes, as in the present case, to a belief, on the part of the bridegroom, in the chastity of the woman chosen by him to be his wife.

Doubtless the priesthood of Babylon were highly elated that one of their number had allied himself by marriage with the royal family of Babylon, for this must have added greatly to their prestige and influence at the time. The date is March-April, the Babylonian New-Year's Day, 560 B.C.

Nabû-sum-ukîn, priest of Nebo, director of E-zida, son of Siriktum-Marduk, descendant of Isdē-ílāni-danan, said to Neriglissar, king of Babylon: "Give Gigîtum, thy virgin daughter, to wifehood, and let her be a wife." Neriglissar (said) to Nabû-sum-ukîn, priest of Nebo, director of E-zida.

About twenty-eight lines are wanting here, the text becoming again legible at the end of the list of witnesses on the reverse: —

. . . . son of Nabû-sum-lîsir . . . .
. . . . ri, son of Nabu-sarra-utsur, the judge (??)
Nabû-sum-utsur, the scribe, son of Assur . . .
Babylon, month Nisan, day 1st, year 1st,
[Neriglis]sar king of Babylon. Copy of E-zida.

IV. — The Medes and Persians in Bactria

Sa-Nabû-duppu sells his Bactrian Slave-girl

This text, which is rather mutilated, is an ordinary sale-tablet. Its importance, however, will be easily seen, for it is seldom that records of battles and warlike expeditions are to be found on contract-tablets. It is therefore one of the most interesting tablets of its class, and even the names of the witnesses possess a special value. The tablet is composed of three fragments, which were found by me to join some years ago. The number is 82–9–18, 4215 + 4226.

One of the important points concerning this text is that, by the tenth year of Darius, five battles had been fought with a Bactrian tribe; and it is not unlikely that Sa-Nabû-duppu acquired Nanâ-silim (the unfortunate woman had received a Babylonian name, in accordance with the custom of the time) from the daughter of the man who captured her, namely, Sin-êdhir. The remainder of the contract proper is of the usual kind, and refers, like many others, to the taking of a duty or responsibility by one of the contracting parties (in this case the son of the seller), to guarantee the buyer against any claim hereafter on the part of the seller, his kinsfolk, or the king.

In my first rendering I read the name of the slave as Nanâ-khusa; and Khupiri (which I regarded as the name of a Bactrian tribe) instead of *sipiri*. Noting, however, that the *khu* in Akhume (see the list of witnesses) was differently formed, it now seems to me better to read these words as *Nanâ-silim* and *sipiri*, which readings I have adopted here. The *sipiri* was a Babylonian official attached to the household of the king and princes of the blood. From our text it would seem that this official also conducted military expeditions, at least in Persian times. What is the meaning of the word *dursu*, against which the *sipiri* seems to have gone, is uncertain. There is no determinative prefix or suffix indicating that it is the name either of a person, a place, or a river, though something of the kind might be expected.

* * * * * * *

All the above texts were excavated by Mr. Hormuzd Rassam, in 1881 and 1882 at Babylon and Sippara, the latter supposed to be the Sepharvaim of the Bible.

Sa-Nabû-duppu, son of Nabû-sarra-utsur, with cheerfulness of heart, has sold Nanâ-silim, his Bactrian slave, from the 5th battle of the sipiri against *dursu*, whose right side and hand are inscribed with the name of Dhibtâ, daughter of Sin-êdhir, for [. . . mana . . . shekels of silver], which is by the 1 shekel piece, coined, not standard, for the price complete, to Issar-Taribi, son of Mur-êpus. [N.], son of Sa-Nabû-duppu, takes the responsibility [of defeasor, claimant], royal-handmaidship, (or) born-daughtership, which (may be) upon Nanâ-silim. [The money,

. . . mana . . . shekels of silver], which is by the 1 shekel piece, coined, not standard, (the price of the slave), Sa-Nabû-duppu, son of Nabû-sarra-utsur, has received [from the hands of] Issar-taribi, son of Mur-êpus.

Witnessing: Tsillâ, son of Akhume- . . .; . . . son of Gamaryāwa (Gamariah); Sa-pi- [Bel? son of] . . . ; Barikîa (Berechiah), son of . . . ; . . . son of Quddâ; Samas-îriba (son of) . . . ; Ilāni-bakhâdi, son of . . . ; and the scribe Marduka, son of Epes-îli. Sippar, month Iyyar, 18th day, 10th year, Darîawush (Darius), king of Babylon and countries.

At the sitting of Dhîbtâ, daughter of Sin-êdhir, wife of Man- . . . -Samas.

NO. 3. ASSYRIAN PRIVATE CONTRACT TABLETS[1]

These private contract-tablets will give some idea of the activity of trade and business in Western Asia in the 7th and 8th centuries B.C. In consequence of the overthrow of Tyre, Carchemish seems to have become the chief commercial centre of the Eastern world. The clay-tablets are attested by the seal-impressions, or in lieu thereof, by the nail-marks, of the parties to whom they belonged. Several of them have dockets attached, written in the Phœnician character; and these bilingual legends are valuable corroborations of the accuracy of Assyrian decipherment. The tablets here translated will be found in the "Cuneiform Inscriptions of Western Asia," Vol. III, plates 46–50.

Tablet I

Ten shekels of the best silver, (being) chains for Istar of Nineveh, which Billu-baladh, in the presence of Manuci-Arbela [here follow 3 seals], has lent on a loan; the silver is to have interest paid upon it at 4 per cent. On the 3rd day of the month the silver has been given. (Dated) 3rd day of the month Sebat, during the eponymy of Rimmon-sallim-ani. The witnesses (were): Khattal-munu, Rahu, Kulduin, Neriglissor, Arakh-Nebo the Serippian, Musezib-Assur, Nebo-sallim-sunu, Khanni, (and) Bil-sadan.

[Then follow two lines and a half of Phœnician, the first of which consists of the proper name, Mannugi-Arbela.]

Tablet II

Two talents of iron, the property of Istar of Arbela, which Manuci-Arbela, in the presence of Samas-akhi-erib, in the month of Ab,

[1 Translated by Rev. A. H. SAYCE. Reprinted, by permission, from "Records of the Past," (Vol. I, p. 137 *seq.*), published by Samuel Bagster and Sons, London.]

gives; if they are not given back, at 3 per cent. shall be the interest upon them. On the 11th day of the month Sivan during the eponymy of Bamba;[1] before the witnesses: Istar-bab-esses, Kua, Sarru-ikbi, Dumku-pani-sarri, (and) Nabua.

Tablet III

Four manehs of silver according to the standard of Carchemish, which Neriglissar, in the presence of Nebo-sum-iddin, son of Nebo-rahim-baladhi, the Keeper of the Crown, from the city of Dur-Sargon, lends out at 5 shekels of silver per month interest. The 26th day of the month Iyyar, during the Eponymy of Gabbaru.[2] The witnesses (were): Nebo-pal-iddin, Nebo-atsib, the holder of the two sceptres, Akhi-ramu, of the same office, Assur-danin-sarri, of the same office, Disi the astronomer, Samas-igur . . ., Sin mati-kali the executioner, (and) Merodach . . . the astronomer.

Tablet IV

The seal of Ebed-Istar, the master of the men. The giving-up of Hoshea, his two wives Mih'sa (and) Badia, 'Sigaba, Bel-kharran-cunucci, (and) his two daughters, in all 7 persons, slaves, whom Ebed-Istar has sold; and 'Simadi for 3 manehs of silver has taken. The whole sum hast thou given. The exchange (and) the contract are finished: (there is) no withdrawal. The witnesses (are) Bel-nuri the *priest*, Amyatehu, 'Sangi, Kat-i'sa (and) 'Sidur. (The name of the 6th witness is not filled in.) The month Tisri; the Eponymy of Dananu.[3]

[Then follow two lines of Phœnician.]

Tablet V

The nail-mark of Sarru-ludari, the nail-mark of Atar-'suru, (and) the nail-mark of the women Amat-'Suhala, the wife of Bel-duru, the . . . . , the owner of the house (which) is given up. (Then follow 4 nail-marks.) The whole house with its woodwork and its doors, situated in the city of Nineveh, adjoining the houses of Mannu-ci-akhi and Ilu-ciya, (and) the property of 'Sukaki he has sold, and Tsillu-Assur the astronomer, an Egyptian, for one maneh of silver (according to) the royal (standard), in the presence of Sarru-ludari, Atar-'suru, and Amat-'suhala, the wife of its

[1] B.C. 650–640. [2] B.C. 667. [3] Cir. B.C. 680.

owner, has received it. The full sum thou hast given. This house, has been taken possession of. The exchange (and) the contract are concluded. (There is) no withdrawal. Whosoever (shall act) feloniously among any of these men who have sworn to the contract and the agreement, which (is) before (our) prince Assur, 10 manehs of silver shall he pay. The witnesses (are): Su'san-kukhadnanis, Murmaza the . . . , Ra'suah the pilot, Nebo-dur-sanin the partitioner of the enemy, Murmaza the pilot, Sinnis-nacarat, (and) Zedekiah. The 16th day of the month Sivan, the eponymy of Zaza [1] of the city of Arpad, before Samas-itsbat-nacara, Latturu, (and) Nebo-sum-yutsur.

NO. 4. ASSYRIAN DEEDS[2]

The commercial and legal deeds belong to the most difficult class of inscriptions, and have necessarily required a great deal of study. Sir Henry Rawlinson first pointed out the importance of these tablets, and I translated some Babylonian commercial texts in my pamphlet "Sur les Inscriptions Commerciales," 1861. I also gave a translation of the first juridical text in the "Revue Archéologique," 1864.

I am not aware that the Assyrian deeds have ever been explained in a way that would satisfy a legist; some scholars, among whom may be named Mr. Sayce, have turned their attention to them, several others examined them merely on account of the most curious dates and eponymic names that are to be found in them. But the real importance of these very numerous deeds consists in the light which they will hereafter throw upon the civilization of Assyria and Chaldea in general, and the history of legislation in particular. [These inscriptions are respectively, W. A. I., III, plates 48–3, 49–1, and 49–3.]

I

DEED OF SALE OF A HOUSE BELONGING TO PHENICIAN OWNERS, WITH EGYPTIAN WITNESSES

NAIL-MARK [3] of SAR-LUDARI, nail-mark of AKHASSURU, nail-mark of the woman AMAT-SU'LA, wife of BEL-DUR, Captain in the army, owners of the sold house;

[Four nail-marks.]

A house, well constructed, with its beams and its doors, situated in the city of Nineve, near the house of MANNU-KI-AKHE, near the house of EL-ITTIVA, near the markets.

And has acquired it SIL-ASSUR, the Chief, an Egyptian; for

[1] B.C. 692.

[2] Translated by Dr. JULES OPPERT. Reprinted by permission from "Records of the Past" (Vol. VII, p. 111 *seq.*), published by Samuel Bagster and Sons, London.]

[3] The nailmarks are used instead of a seal.

one mina of the King, of silver,[1] he has bought it from SAR-LUDARI, from AKHASSURU, from the woman AMAT-SU'LA, wife of the (named) husband.

The price has been definitively fixed, this house has been paid and bought, the retractation of the contract and the annulment is not admitted.[2]

Whosoever, in future, at any time amongst these men (sellers) will claim before me an annulment of the contract, from SIL-ASSUR, shall give 10 mines of silver.[3]

In the presence of SUSANQA, son-in-law of the King, of HARMAZA, Captain, of RASU, sailor, of NABU-DUR-USUR, spy of strangers, of HARMAZA, Chief of the sailors, of SIN-SAR-USUR, of ZIDQAIU.[4]

In the month of Sivan, the 26th day, in the eponymy of ZAZAI, Governor of Arpad.[5]

Judged before SAMAS-YUKIN-AKH, before LITTURU, before NABU-SUM-USUR.

II

DEED OF THE SALE OF ISRAELITES BY A PHENICIAN

On the obverse. Seal of DAGAN-MILKI, the owner of the sold slaves.

[Seal.]

IMANNU,[6] the woman U . . .[7] MELCHIOR, in all three persons.

And has acquired them BEL-MALIK-ILI, the *mugil* of the propriety of the King; for 3 mines of silver,[8] each mina according to the use of the city of Karkamis, he has bought them from DAGAN-MILKI.

The price has been definitively fixed, these persons have been paid and bought, the retractation of the contract and its annulment is not admitted.

Whosoever, in future, at any time, will stand before me, and invoke me, either DAGAN-MILKI, or his brothers, or his brothers' sons, or any body of his, or a mighty man, who would claim from before me the annulment of this contract, from BEL-MALIK-ILI, his sons, or his grandsons, shall give 10 mines of silver, one mine of gold,[9] to the goddess ISTAR of Arbela. He shall return, with the tenth, the price to the owners. Then he will get rid of his contract, he has not sold.

In the presence of ADDAI, the Chief (*mil*) of AKHIRAME, ditto, of

[1] £9 sterling.
[2] Or in ordinary legal phraseology "this contract shall not hereafter be retracted or annulled."
[3] £90. [4] Sedkia. [5] B.C. 891. [6] Heiman.
[7] Lacuna. [8] £27. [9] £140, with £90 silver, £230.

PAQAHA,[1] the head of . . .,[2] of NADBIYAHU[3] (the great *kusu*), of BEL-SIMEANI, before BIN-DIKIRI, of TABSAR-ISTAR, of TABNI, the Chief, who is possessor of the sum.

In the month of Ab, the 20th day, of the eponymy of MANNU-KI-ASSUR-LIH.[4]

III

SALE OF A WOMAN, BY HER FATHER AND HER BROTHERS, TO AN EGYPTIAN LADY, NAMED NITOCRIS, IN ORDER TO MARRY HER TO HER SON SIHA

It will be noticed that there is a special clause concerning her possible heirs, as the woman had a first husband. This is a very curious tablet.

Seal of NABU-RIKHTI-USUR, son of AKHARDISE, the Hasean, who assists in his art ZIKAR-ISTAR, in the town of . . .[5], seal of TEBETAI, his son, seal of SILIM-ASSUR, his son, the owners of the sold woman.

[Seals.]

The girl TAVAT-HASINA, daughter of NABU-RIKHTI-USUR.

And acquired her NIHTI-EQARRAU[6] for 16 drachmes of silver,[7] for the sake of SIHA,[8] for to marry her, she bought her. She will be the wife of SIHA.

The price was definitively fixed.

Whosoever, in future, at any time, will stand before me (the Judge), and will invoke me, either NABU-RIKHTI-USUR, or his sons, or his grandsons, or his brothers, or his brothers' sons, or his representative, or any body of his, who would claim before me the annulment of the contract from NIHTI-EQARRAU, her sons or her grandsons, shall give ten mines of silver. Then he shall be free from his contract, he has not sold.

SAHPIMAYU, the sailor, BEL-SUM-IDIN, son of UDANANI, ARDU-TAVAT, son of ATE, the man . . .,[9] these are the three heirs of the woman,[10] on account of the fastening the hands and the tying of the knots[11] with KERMEONI, who was the heir.

In the presence of AKHARDISE, of . . .[9] NIPIKALANTAKAR, of MUTHUMHEPU, of HASBA . . ,[9] of . . . ,[9] of . . . ,[9] of . . . ,[9] of . . . ,[9] of . . . [9],[12] of ULALAI . . .[9]

[1] The Jewish name Pekah. [2] Lacuna.
[3] Evidently a Jew; the name is found in the Bible. [4] B.C. 709.
[5] Lacuna. [6] Nitocris. [7] £2 8*s*.
[8] Or, Tachos. [9] Lacunæ. [10] Nitocris.
[11] Certainly the expression of a ceremony, perhaps the wedding performances.
[12] Five names lost.

In the month of Elul, the first day, of the eponymy of ASSUR-SADU-SAQIL.

Judged before NUR-SAMAS, before MUTHUMPAITI, before ATE, before NABU-IDIN-AKHE, the chief.

NO. 5. CONTRACT-TABLETS RELATING TO BELSHAZZAR[1]

The three contracts which follow are among the numerous cuneiform documents of the same class the publication of which we owe to the indefatigable labours of Dr. Strassmaier. They are published in his "Babylonische Texte: Inschriften von Nabonidus," i, iii, Nos. 184, 581, and 688, and are interesting on account of their references to Belshazzar, the eldest son of Nabonidos, whose name is written in Babylonian Bilu-sarra-utsur, "O Bel, defend the king." It is especially curious to learn from one of them that the heir-apparent to the throne had to conform to the same legal obligations as the meanest of his subjects. Security was exacted by him for the payment of a debt, a portion of the security being a house inhabited by a Persian. As Persian slaves are mentioned in other deeds of the period it is possible that the Persian in question was a slave. At all events the notice of him proves that there were Persians living in Babylon before the conquest of the country by Cyrus. The third document, it will be observed, is dated six years before the overthrow of Nabonidus and the entrance of Cyrus into Babylon.

No. I

A house belonging to Nebo-akhi-iddin, the son of Sulâ, the son of Egibi, which adjoins the the house of Bel-nadin, the son of Rimut, the son of the *soldier*(?) has been handed over (by Nebo-akhi-iddin) for 3 years to Nebo-yukin-akhi the secretary of Belshazzar, the son of the king, for $1\frac{1}{2}$ manehs of silver, sub-letting of the house being forbidden, as well as interest on the money. (Nebo-yukin-akhi) undertakes to plant trees and repair the house. At the expiration of the 3 years Nebo-akhi-iddin shall repay the money, namely $1\frac{1}{2}$ manehs, to Nebo-yukin-akhi, and Nebo-yukin-akhi shall quit the house in the presence of Nebo-akhi-iddin. The witnesses (are) Kabitya, the son of Tabnêa, the son of Egibi; Tabik-zira, the son of Nergal-yusallim, the son of Sin-karabi-isime; Nebo-zira-ibni the son of Ardia; and the priest Bel-akhi-basa, the son of Nebo-baladhsu-iqbi. (Dated) Babylon, the 21st day of Nisan, the 5th year of Nabonidus king of Babylon.[2]

[1] [Translated by Rev. A. H. SAYCE. Reprinted by permission from "Records of the Past," N. S. (Vol. III, p. 124 *seq.*), published by Samuel Bagster and Sons, London.]

[2] B.C. 551.

No. II

The sum of 20 manehs of silver for wool, the property of Belshazzar, the son of the king, which has been handed over to Iddin-Merodach, the son of Basâ, the son of Nur-Sin, through the agency of Nebo-tsabit the steward of the house of Belshazzar, the son of the king, and the secretaries of the son of the king. In the month Adar, of the 11th year (of Nabonidus), he gives the money, namely 20 manehs. The house of . . . the Persian and all his property in town and country shall be the security of Belshazzar, the son of the king, until he shall pay in full the money aforesaid. The money which he shall (meanwhile) make upon [the property] (?), he shall pay as interest. Witnessed by Bel-iddin, the son of Rimut, the son of the *soldier*(?); Etilpi, the son of . . . the son of the father of the house; Nadin, the son of Merodach-[sum-utsur], the son of the superintendent of the works; Nergal-yusallim, the son of Merodach-[edir], the son of Gasura; Merodach-natsir, the son of Samas- . . . , the son of Dabibi; and the priest Bel-akhi-iddin, the son of Nebo-baladhsu-iqbi. (Dated) BABYLON, the 20th day of the month . . . , the 11th year of Nabonidus king [of BABYLON].[1]

No. III

One maneh 16 shekels of silver capital and interest, the property of Nebo-tsabit-idâ, the steward of the house of Belshazzar, the son of the king, which (he owes) to Beliddina, the son of Bel-sum-iskun, the son of Sin-tabni, and the seed grown in sight of the chief gates (of BABYLON) which has been taken as security (for it). The money, namely 1 maneh 16 shekels, Nebo-tsabit-idâ, by the agency of Itti-Merodach-baladhu, the son of Nebo-akhi-iddin, the son of Egibi, has presented to Bel-iddina. The witnesses (are) Nebo-iddina, the son of Rimutu, the son of Kikî; Bel-iddina, the son of Bel-sum-iskun, the son of Sin-tabni; Nebo-zira-esir, the son of Ina-essu-edir, the son of the *Umuk;*[2] Nadinu, the son of Merodach-iddin-akhi; Nergal-yusallim, the priest, the son of Merodach-edir, the son of Gasura. (Dated) at BABYLON, the 27th day of the second Adar,[3] the 12th year of Nabonidus king of BABYLON.[4]

[1] B.C. 545.
[2] An officer who seems to have had something to do with the beginning of the year.
[3] The intercalary month Ve-Adar.
[4] B.C. 544.

NO. 6. CUNEIFORM TABLETS OF KAPPADOKIA[1]

We now have evidence that the cuneiform system of writing was once employed throughout the greater part of the civilized world of the East. The Persians under Darius formed an aphabet out of it, which became the key to the modern decipherment of the cuneiform texts. It had originally been the invention of the primitive Sumerian population of Chaldæa, who spoke an agglutinative language, and from whom it was borrowed by the Semitic Babylonians and Assyrians. In Elam it was used to express the agglutinative dialects of Shushan and Mal-Amir, and in the ninth century before our era it was adopted by the kings of Ararat, who reigned at Van, and whose language seems to have been related to that of the Georgians of to-day. A seal found near Herat in 1842 shows that even as far east as Baktria the cuneiform characters were employed to represent the language of the country, and the inscription of Anubanini, King of Lulubi, discovered by Sir Henry Rawlinson at Ser-i-pul and lately copied by Mr. de Morgan, tells us that here also the ancient language of the inhabitants had been embodied in the characters of the cuneiform script. We have learnt from the tablets of Tel el-Amarna that in the century before the Exodus the same system of writing was the common medium of literary intercourse among the various nations who lived between the Tigris and the frontiers of Egypt. Among the correspondence found at Tel el-Amarna is a long letter in the language of Mitanni, the Aram-Naharaim of Scripture, the characters in which it is written being those of the cuneiform syllabary, and the extent to which the syllabary was studied and known in Canaan at the time removes our astonishment at finding that it has been used to express the Phœnician language on two seals now in the collection of M. de Clercq.

The cuneiform system of writing and the Assyrian language had penetrated even to the north-west, to the neighbourhood of the modern Kaisarîyeh. The discovery of the cuneiform inscriptions of Kappadokia is due to the sagacity of Mr. Pinches. In 1882 he pointed out the existence of two tablets, one in the British Museum, the other in the Louvre, which were written in a peculiar form of cuneiform script and apparently in an unknown language. They had been obtained from an Armenian dealer in antiquities at Constantinople, and the occurrence of the word *ku-din-a*, "mules," in the one in the British Museum made Mr. Pinches connect it with a tablet from Nineveh in which mention was made of the transport of these animals from Kusâ in Kappadokia ("Proceedings of the Society of Biblical Archæology," Nov. 1881). The following summer Prof. W. M. Ramsay bought five more tablets of a similar character at Kaisarîyeh, upon which I published an article in the "Proceedings of the Society of Biblical Archæology," (Nov. 1883). As, however, I was unable to identify correctly a large number of the characters, I was also unable to decipher the texts, and the conclusions I drew in regard to the language of them were incorrect.

The tablets obtained by Prof. Ramsay are now in the British Museum. Other tablets have since been purchased by Mr. Golénischeff, the University of Philadelphia, and myself, and it is now known that they are found in a place three or four hours distant from Kaisarîyeh.

* * * * * * *

The age of the Kappadokian tablets is, I believe, as early as that of the Tel el-Amarna tablets. We find in both the same archaic formulæ, and the same use of an ideograph by the side of the phonetically-written word which it denotes. The dialect of the tablets is distinguished by the phonetic peculiarities which belong to the letters from Northern Syria in the Tel el-Amarna collection, and the forms of the characters are

[1] [Translated by Rev. A. H. SAYCE. Reprinted by permission from "Records of the Past," N. S. (Vol. VI, p. 115 *seq.*), published by Samuel Bagster and Sons, London.]

similar in the two classes of documents. The employment of the mimmation also points to an early date. That Assyria was already in close relations with Khani-rabbat or Melitêne in the fifteenth century B.C. we have learnt from the Tel el-Amarna correspondence, and the place where the tablets are found may easily have been included within the kingdom of Khani-rabbat. It may be added that one of the tablets belonging to Mr. Golénischeff bears the impress of a seal, upon which are figures in the Hittite style of art as well as the remains of a Hittite character.

The tablets relate for the most part to the loan of money, or the deposit of various objects in the hands of certain persons, and they contain a number of technical terms, the meaning of which is not as yet clear. One of these terms is *khamustu*, "a fifth," of which we also find the plural *khamsatu* "fifths." A "fifth" was generally deducted from the sum of money lent out at interest, though who was the official to whom it was paid, and why it was paid, are questions to which at present I can return no answer. Besides the *limmu*, or yearly eponym, whose title is always written *limum*, we find mention of the *durdanu*, in Assyrian *turtanu*, or "Tartan" (G. xx. 21); of a Rab-zikitum, or Chief Judge; of a Rab-gimelti, or Chief Magistrate; of a Rab-aladinnim; and of a Rubaum, or "prince."

Most of the deities mentioned in the tablets are Assyrian. Thus we find the names of Assur, Anu, Istar, Bel, Nebo, Nana or Nani, Samas, and Zu. Zu, indeed, who occupies only a subordinate place in the Assyrian pantheon, seems to have been a favourite in Kappadokia, if we may judge from the number of proper names into which his name enters. Thus we have Ena-Zuim, "the eye of Zu," and Zu-galia, "Zu is my priest." Another deity was Babu, "the gate," who appears to have been of Aramaic origin. At all events the name is not found in the lists of the Assyrian divinities, while, according to Damascius, the goddess Babia was worshipped at Damascus. The Aramaic name Bur-Addi, corresponding to the Hebrew Ben-Hadad, occurs in one of the tablets (G. ix. 11), and we meet also with that of Bar-Sibala (G. xviii. 2). Among the Semitic deities mentioned in the tablets, but not worshipped in Assyria, is Basku, "the serpent." Besides the Semitic deities there are, as might be expected, others of foreign origin. One of these is Tarku, whom I had long since maintained to be a Hittite god; a second is Khati, "the Hittite" (?), whose name enters into that of a woman called Khati-zadinniat.

The introduction of Assyrian deities into Kappadokia explains the proper names met with in the Greek inscriptions of Kappadokia and Kilikia, which are obviously derived from the names of Assyrian gods. Thus we have Nanas from Nana, Nineis from Nin, Nenaris from Nannaru. As Nineps is one of the Kilikian names which have thus been handed down to us, it seems probable that the name of the Assyrian god Uras, which is often represented by the two characters *Nin* and *ip*, was really pronounced Nin-ip.

In place of the name of a particular deity we very often have merely the word *il* or *el*, "god." In fact, the simple *il* or *el* seems to recur more frequently than even the name of Assur. We find, for instance, Iquib-il (perhaps "Jacob is god") by the side of Iquib-Istar and Egib-mekhra, Ilu-rabu ("God is great"), Ilu-nada ("God has appointed"), Asuma-il, Erada-il, Anakh-ili, Sulaba-il, Nur-ki-ili, and El-Anima (perhaps "a god is Anu," like Nani-belim, "Nana is lord"). This preference for the simple *il* — which is also written *el* — may be due to its substitution for the name of some foreign divinity, but it may also indicate the existence among the colonists of a tendency toward monotheism.

The names of several months are mentioned in the tablets. One is Kuzallu (G. iii. 12), which, according to a lexical tablet (*W. A. I.* v. 43, 14), was a name of the month Sivan. As the great cylinder inscription of Tiglath-pileser I. is dated in this month, its name may be regarded as a witness in favour of the early date of the Kappadokian tablet. Another month is Kur-sarani or Akh-saranim (G. iv. 7; x. 8), while a third is *arkhu-sa-zarati*, "the month of sowing" (G. vi. 12, 13), and a fourth is Iyyar-Qamarta (G. ix. 9). Here the word Qamarta seems to be the native name of the Assyrian Iyyar or April, the whole name signifying "the

month of the bull Qamarta." A fifth month was that of Napisti-Zuim, the month of "the life of the god Zu" (G. xi. 9).

I

One maneh of refined silver Kura transferred; Iqib-il has (it). He has lent (it); the fifth [1] belongs to Bil-akh-Asur the son of Gadidi. The month Akh-saranim, the yearly eponym being Ilu-rabu. After 11 fifths he shall pay the capital, but he has not yet paid the one shekel and a half which he registers (as interest) each month upon the maneh. The witnesses are Ilu-nada, Amur-Asur (and) Banaga.

II

Two manehs (and) 10 shekels of silver Asuma-il has transferred; Zaki [m]-il has (them). After two months he shall repay (them). And he registers the sum (for interest) as 6 manehs, but he has not yet paid (anything). The manehs (belong) to himself alone. Half a maneh of silver of the property [2] he registers on a duplicate, and the six *remain*(?). The witnesses are Barruwa the son of Nabate, Arzana-mil(?)ku his brother, (and) Anina.

III

[Twenty] manehs of silver Garia, Asa'su and Mer-esu the prince have given as a pledge to Iqib-il. For the 20 manehs of silver Supuna his brother asks, and the Rab-aladinnim who is the Chief Judge has effected the transfer by hand in the month Napisti-Zuim, the yearly eponym being Suma. Ten manehs of silver at harvest-time he shall pay; 10 manehs of silver at the second harvest he shall pay, and the amount, namely, the 20 manehs of Garia, Asa'su and Mer-esu, Supuna his brother shall repay to the brothers; and as for the 20 manehs of silver, they shall weigh them, even the silver, on the head of Garia his brother. The witnesses are the man who binds their houses and their cities, the Rab-gimeltim (and) Kumri of DINKISA.

IV

To the daughter of [her] father say thus: My daughter is good, and as for me, we have listened to thy letter which Samas-tabba'i

[1] *Khamustim*. The "fifth" seems to mean an instalment of interest here.

[2] Or of "the deposit" (*isati*) which he "holds" (*isu*).

has brought me, and I answer thy letter thus: I also send an answer as follows: As regards the manehs, behold (they are) the interest on the property of our seed;[1] three of them for a *násbutim* are fixed; two-thirds is thy property. I have seen Samas-tabba'i asking for a share in the inheritance,[2] whom thou hast sent to me, saying: Behold all the inheritance! And *iba'si* have not been given. But let thy orders go, (for) *iba'si* have not been given. To the presence of our brother take it, and he will arrange everything. And the law of thy god . . . thy seat . . . the letter do not give.

V

To Amur-Samas and Aladinim. To Aladinim say thus: They have numbered the tablet before ASSUR, and I and Padu have devoted one maneh and a half of silver (written) on the tablet in *ganis;* and that it never become (private) property they have bound a shekel of silver in a *case*(?). I have given thy tablet [to Amur-] Samas; he has taken the . . . "Amur-Samas, thy brother, (is) our brother," — behold the words of the tablet, which do thou give to Amur-Samas; and also thy tablet (is) evidence for the silver above-mentioned, the (private) property, (and) the shekel of silver belonging to thy tablet. And the *rest*(?) of the (private) property among the seed of my father and among my own seed Amur-Samas shall never take; and also I *add*(?) to the silver the (private) property (described) on thy tablet (and) the deed which I will never violate.

VI

To Iqib-il say thus: Isma-Asur my little one has lent the *burnat,* our property; they have not brought (it) back; (and) the *agur,* thy property, they have not brought back; and behold I did not give him (anything) in the whole of *what is sent*(?), . . . and thou sendest to me Qama-Asur: he does not make small the eye; thy orders thou hast taught him, and thou hast not taken the 6 manehs of silver which Sulaba-il gave me. One maneh of silver which (is) in the *keeping*(?) of Sulaba-il . . .

[1] *Sadu ziri-ni.* But it is also possible to read *sa dugiri-ni,* "which thou hast transferred to me."

[2] *Asume rasaum. Asume* must have the same root as the Assyrian *usmanu,* "baggage." Compare the name of the Hamathite god Ashima (2 Kings xvii. 30).

VII

To Khanu[ni]-Nabim, Iqib-il and Asur-malik say thus: My father, my lord, the master left a tablet (of legitimacy) to myself at my birth, and now I hear a letter about "the ox of a foreigner"; and I do not send to the city saying: At the [second ?] gate the sheep I have . . ., I have *slaughtered*(?); [to] the city thou dost not send [saying:] say: for the *prey*(?), O my son, thou shalt go until that day (whereon) one . . . the master . . . and I went to my father until that day (whereon) I he[ar] that [letter] speaking of "the ox of a stranger"; the sheep . . . and I have gone a long way and [to] the midst of the [mo]untain I ascended, and thus I am; and the elders have sent, (saying that) I should go, by the hand of Eriti. I have gone a long way to the cities [which] thou gavest me: the tablet about the 4 oxen . . . until I shall cause (them) to be given. [And now] [af]ter travelling a long way and bringing (them) I hear that as regards my property (which) Ganis has taken he will restore (it) to me . . .

VIII

Eighteen and a half shekels of refined silver Dadia the son of Nani-belim has transferred; Asur-malik, the son of Ena-Zuim the son of Zu-galia has (them). After five months he shall repay them, but he has not yet paid one shekel of the same. He shall register a duplicate during the month. (Dated) the month Kuzalli, the yearly eponym being Asur-imedi the sailor. The witnesses are Ena-Asur the son of Erati (and) Garia the son of Gimil-Belim.

IX

Fourteen shekels of silver Birati has transferred, Asur-rabu holds (them). They have taken the fifth of Asur-malik and Enna-Zuim. After ten fifths he shall repay the money; but he has not yet paid (it). He shall register a duplicate according to the language of the foreigner. (Dated) the month of sowing, the yearly eponym being Sagati-Asur. He has made the copy the same day that he arranges the partnership. In his *kurumeti* he writes the sum of silver. Witnessed by Asur-rabu (and) Id(?)-sa-Asur.

X

On two manehs of silver, which Istar-namâ has given on mortgage to Asur-rabu, they have taken half a maneh of silver as the fifth of Asur-bel-amatim. The silver and its *voucher*(?) Erada-il has taken; Ili-bani has weighed it, and Asur-rabu returns (it) to Ili-bani, Erada-il keeps it. The witnesses are Asur-malik, Gullaba (and) . . .

XI

One maneh of *unrefined*(?) silver, in the presence of the brother, of Ganis, Sarkhunu has transferred; Anakhili holds (it). They have taken the fifth of Asur-malik the son of Zu-galia. (Dated) the month Akh-sarani. After a month he shall repay [the money]. The witnesses are Dumana the foreigner, Dubduba, (and) Rakima-(?)-ibri. His house, his furniture and his *gurru* I inspect.

XII

Thirteen and a *ner* shekels of silver, thy share, I have given on mortgage and Zu-takhziz has given judgment; the breast (and) head Izmetas(?) has *struck*(?) saying: "I have paid the 15 shekels of silver that they may not be given back: I have weighed the rest, fifteen shekels, for Sakima the son of my brother. The payment of 20 manehs, even the manehs (inscribed on) the tablet, (and) the additional sum which is repeated on its enclosure, I have given." The manehs he has taken for thee saying: ASUR has appointed that to Mar-ki-Asur the *grandson*(?) of Asur-ki-naram and (to) Samas-tabba'i it should be said; to Mar-ki-Asur it should be said: "The 33 manehs he has taken we have certified, and I, thy . . ., have entered into the house of Abu-salim the son of Asur-emuki, and Sakima . . . $1\frac{1}{2}$ manehs of silver. The rest of the silver and [gold? belongs to] Sakima, the son of the brethren. To the place of his *sakhut* we have ascended."

XIII

Twenty mules for a chariot in good condition, 10 mules the offspring of a mule in good condition, 10 (mules) of KU'SU, linen in good condition for the clothing of royalty, (and) the *rest*(?) of the mules of the country in good condition, belonging to El-ugar, all the mules they shall value to El-ugar, in all 80 mules in good

condition shall be valued to El-ugar. For a *receipt*(?) the purchasers ask him, and one-third of a maneh (and) five shekels in silver to El-ugar are paid.

XIV

Four manehs of refined silver Salsu(?)-tida the son of Khiti-ili has lent to Tarku-zar(?)bam; the fifth belongs to Asur-imedi and Asur-rabu. After 4 years he shall pay 8 manehs of silver. Karmadu (is) *limmu*. Sagati-sudua has taken it, namely the silver; for his . . . days Tarku-zar(?)ba shall have full possession of the whole, and Salsu(?)-tida shall deliver to him the whole of it entirely, and Eratim has taken the place of Salsu(?)-tida who is absent. Witnessed by Lalim and Kinanim.

NO. 7. WILL OF SENNACHERIB, KING OF ASSYRIA[1]

I, Sennacherib, [705–680 B.C.] king of multitudes, king of Assyria, have given chains of gold, stores of ivory, a *cup* of gold, crowns and chains besides, all the riches of which there are heaps, crystal and another precious stone and bird's stone: one and a half manehs, two and a half cibi, according to their weight: to Essar-haddon my son, who was afterwards named Assur-ebil-mucin-pal according to my wish; the treasure of the Temple of Amuk and (Nebo)-irik-erba, the harpists of Nebo.

[1] [Translated by Rev. A. H. SAYCE. Reprinted, by permission, from "Records of the Past" (Vol. I, p. 136), published by Samuel Bagster and Sons, London.] It is the earliest example of a Will extant. [But *cf.* Ch. XXIV, Sec. i, No. 1, an Egyptian Will of the Fourth Dynasty.] The original document is printed in the third volume of the "Cuneiform Inscription of Western Asia," pl. 16, No. 3.